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GOVERNMENT OF INDIA  
LEGISLATIVE DEPARTMENT

THE  
UNREPEALED CENTRAL ACTS

WITH CHRONOLOGICAL TABLE & INDEX

Vol. X  
From 1938 to 1940, both inclusive



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## PREFACE

This Volume has been prepared on the same lines as Volumes I—IX published by the Reforms Office in 1939. The Acts included in this Volume have been printed as modified up to the 1st June, 1941.

L. E. JAMES,

*Assistant Secretary,  
Legislative Department.*

NEW DELHI,

*The 18th November, 1941.*



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# THE INSURANCE ACT, 1938

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# ACT No. IV OF 1938.<sup>1</sup>

[26th February, 1938.]

## An Act to consolidate and amend the law relating to the business of insurance.

**W**HEREAS it is expedient to consolidate and amend the law relating to the business of insurance; It is hereby enacted as follows:—

### PART I.

#### PRELIMINARY.

1. (1) This Act may be called the Insurance Act, 1938. Short title, extent and commencement.

(2) It extends to the whole of British India.

(3) It shall come into force on such date<sup>2</sup> as the Central Government may, by notification in the official Gazette, appoint in this behalf.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(1) “actuary” means an actuary possessing such qualifications as may be prescribed;

(2) “policy-holder” includes the person who is the absolute assignee of the benefits under the policy;

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<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1937, Pt. V, p. 63; and for Report of Select Committee, see *ibid.*, p. 144.

This Act has been applied to—

(1) British Baluchistan, see Notification No. 200-F., dated 10th August 1938, Gazette of India, 1938, Pt. I, p. 1371.

(2) the partially excluded areas in the Mymensingh District and the District of Darjeeling, see Bengal Government Notification No. 1902-Com., dated 28th June 1939, Calcutta Gazette, dated 16th July 1939.

<sup>2</sup> The 1st July, 1939; see Notification No. 589-I(4)38, dated the 1st April, 1939, Gazette of India, 1939, Pt. I, p. 631.

## (Part I.—Preliminary.)

- (3) "approved securities" means Government securities, and any other security charged on the revenues of the Central Government or of a Provincial Government, or guaranteed fully as regards principal and interest by the Secretary of State in Council or the Secretary of State or the Central Government or a Provincial Government; and any debenture or other security for money issued under the authority of any Act of a Legislature established in British India by or on behalf of a port trust or municipal corporation or city improvement trust in any Presidency-town, or by or on behalf of the trustees of the port of Karachi <sup>1</sup>[and any security issued by the Government of an Indian State and specified as an approved security for the purposes of this Act by the Central Government by notification in the official Gazette];
- (4) "auditor" means a person qualified under the provisions of section 144 of the Indian Companies Act, 1913, to act as an auditor VII of 1913. of companies;
- (5) "certified" in relation to any copy or translation of a document required to be furnished by or on behalf of <sup>2</sup>[an insurer or a provident society as defined in Part III] means certified by a principal officer of <sup>3</sup>[such insurer or provident society] to be a true copy or a correct translation, as the case may be;
- (6) "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction;

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<sup>1</sup> These words were added by s. 2 of the Insurance (Amendment) Act, 1940 (20 of 1940).

<sup>2</sup> These words were substituted for the words "an insurer" by s. 2 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>3</sup> These words were substituted for the words "the insurer" *ibid.*

*(Part I.—Preliminary.)*

X of 1920.

(7) "Government securities" means Government securities as defined in the Indian Securities Act, 1920;

VII of 1913.  
IX of 1932

(8) "insurance company" means any insurer being a company, association or partnership which may be wound up under the Indian Companies Act, 1913, or to which the Indian Partnership Act, 1932, applies;

(9) "insurer" means—

(a) any individual or unincorporated body of individuals or body corporate incorporated under the law of any country other than British India, carrying on insurance business [not being a person specified in sub-clause (c) of this clause] which—

(i) carries on that business in British India, or

(ii) has his or its principal place of business or is domiciled in British India;

<sup>1</sup>[or

(iii) with the object of obtaining insurance business, employs a representative, or maintains a place of business, in British India;]

(b) any body corporate [not being a person specified in sub-clause (c) of this clause] carrying on the business of insurance, which is a body corporate incorporated under any law for the time being in force in British India; or stands to any such body corporate in the relation of a subsidiary company within the meaning of the Indian Companies Act, 1913, as defined by sub-section (2) of section 2 of that Act, and

VII of 1913.

(c) any person who in British India has a standing contract with underwriters who are members of the Society of Lloyd's

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<sup>1</sup> These words were added by s. 2 of the Insurance (Amendment) Act, 1939 (11 of 1939).

(Part I.—Preliminary.)

whereby such person is authorised within the terms of such contract to issue protection notes, cover notes, or other documents granting insurance cover to others on behalf of the underwriters,

but does not include an insurance agent licensed under section 42 or a provident society <sup>1</sup>[as defined in Part III];

(10) "insurance agent" means an insurance agent licensed under section 42 being an individual who receives or agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business;

(11) "life insurance business" includes annuity business, that is to say, the business of effecting contracts of insurance for the granting of annuities on human life and, if so provided in the contract of insurance, disability and double <sup>2</sup>[or triple] indemnity accident benefits;

(12) "manager" and "officer" have the meanings assigned to those expressions in clauses (9) and (11) respectively of section 2 of the Indian Companies Act, 1913;

VII of 1913.

(13) "managing agent" means a person, firm or company entitled to the management of the whole affairs of a company by virtue of an agreement with the company, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement, and includes any person, firm or company occupying such position by whatever name called.

*Explanation.*—If a person occupying the position of managing agent calls himself manager or managing director, he shall nevertheless be regarded as managing

<sup>1</sup> These words were substituted for the words "to which the provisions of Part III apply" by s. 2 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words were inserted by s. 2 of the Insurance (Amendment) Act, 1939 (11 of 1939).

(Part I.—Preliminary. Part II.—Provisions applicable to Insurers.)

agent for the purposes of section 32 of this Act;

- (14) “prescribed” means prescribed by rules made under section 114; and
- (15) “Superintendent of Insurance” means the officer, who shall be a qualified actuary, appointed by the Central Government to perform the duties of the Superintendent of Insurance under this Act.

## PART II.

### PROVISIONS APPLICABLE TO INSURERS.

<sup>1</sup>[2A. Every insurer shall be subject to all the provisions of this Act in relation to any class of insurance business so long as his liabilities in British India in respect of business of that class remain unsatisfied or not otherwise provided for.

Insurers to be subject to this Act while liabilities remain unsatisfied.

2B. The provisions of this Act shall not apply to an insurer as defined in paragraph (i) or (iii) of subclause (a) of clause (9) of section 2 in relation to any class of his insurance business where such insurer has ceased, before the commencement of this Act, to enter into any new contracts of that class of business.]

This Act not to apply to certain insurers ceasing to enter into new contracts before commencement of Act.

3. (1) No <sup>2</sup>[person] shall, after the commencement of this Act, begin to carry on any class of insurance business in British India, and no insurer carrying on any class of insurance business in British India shall, after the expiry of three months from the commencement of this Act, continue to carry on any such business, unless he has obtained from the Superintendent of Insurance a certificate of registration:

Registration.

<sup>3</sup>[Provided that in the case of an insurer who was carrying on any class of insurance business in British India at the commencement of this Act, failure to

<sup>1</sup> Sections 2A and 2B were inserted by s. 2A of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>2</sup> This word was substituted for the word “insurer” by s. 3 of the Insurance (Amendment) Act, 1940 (20 of 1940).

<sup>3</sup> This proviso was added (with retrospective effect), *ibid.*



*(Part II.—Provisions applicable to Insurers.)*

obtain a certificate of registration in accordance with the requirements of this sub-section shall not operate to invalidate any contract of insurance entered into by him if before <sup>1</sup>[such date as may be fixed in this behalf by the Central Government by notification in the official Gazette], he has obtained that certificate.]

(2) Every application for registration shall be accompanied by—

- (a) a certified copy of the memorandum and articles of association, where the applicant is a company and incorporated under the Indian Companies Act, 1913 <sup>2</sup>[or under the VII of 1913. Indian Companies Act, 1882, or under the VI of 1882. Indian Companies Act, 1866, or under any X of 1866. Act repealed thereby,] or, in the case of any other insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2, a certified copy of the deed of partnership or of the deed of constitution of the company, as the case may be, or, in the case of an insurer having his principal place of business or domicile outside British India, the document specified in clause (a) of section 63;
- (b) the name, address and the occupation, if any, of the directors where the insurer is a company incorporated under the Indian Companies Act, 1913, <sup>2</sup>[or under the Indian VII of 1913. Companies Act, 1882, or under the Indian VI of 1882. Companies Act, 1866, or under any Act X of 1866. repealed thereby,] and in the case of an insurer specified in sub-clause (a) (ii) of clause (9) of section 2 the names and addresses of the proprietors and of the manager in British India, and in any other case the full address of the principal office of the insurer in British India, and the names of the directors and the manager at

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<sup>1</sup> These words were substituted for the words, brackets and figures "the expiry of one month from the commencement of the Insurance (Amendment) Act, 1940" by s. 3 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words and figures were inserted by s. 2 of the Insurance (Second Amendment) Act, 1939 (41 of 1939).

*(Part II.—Provisions applicable to Insurers.)*

such office and the name and address of some one or more persons resident in British India authorised to accept any notice required to be served on the insurer;

- (c) a statement of the class or classes of insurance business done or to be done, and a statement that the amount required to be deposited by section 7 or section 98 before application for registration is made has been deposited together with a certificate from the Reserve Bank of India showing the amount deposited;
- (d) where the provisions of section 6 or section 97 apply, a declaration verified by an affidavit made by the principal officer of the insurer authorised in that behalf that the provisions of those sections as to working capital have been complied with;
- (e) in the case of an insurer having his principal place of business or domicile outside <sup>1</sup>[India], a statement verified by an affidavit made by the principal officer of the insurer setting forth the requirements (if any) not applicable to nationals of the country in which such insurer is constituted, incorporated or domiciled which are imposed by the laws or practice of that country upon Indian nationals as a condition of carrying on insurance business in that country;
- (f) a certified copy of the published prospectus, if any, and of the standard policy forms of the insurer and statements of the assured rates, advantages, terms and conditions to be offered in connection with insurance policies together with a certificate in connection with life insurance business by an actuary that such rates, advantages, terms and conditions are workable and sound:

Provided that in the case of marine, accident and miscellaneous insurance business other than workmen's compensation and motor

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<sup>1</sup> This word was substituted for the words "British India" by s. 3 of the Insurance (Amendment) Act, 1940 (20 of 1940).

(Part II.—Provisions applicable to Insurers.)

car insurance the above requirements regarding prospectus, forms and statements shall be complied with only in so far as the prospectus, forms and statements may be available; and

- (g) the prescribed fee for registration being not more than <sup>1</sup>[five] hundred rupees for each class of business.

(3) In the case of any insurer having his principal place of business or domicile outside <sup>2</sup>[India], the Superintendent of Insurance shall withhold registration or shall cancel a registration already made, if he is satisfied that in the country in which such insurer has his principal place of business or domicile Indian nationals are debarred by the law or practice of the country relating to, or applied to insurance from carrying on the business of insurance, or that any requirement imposed on such insurer under the provisions of section 62 is not satisfied.

<sup>3</sup>[(4) The Superintendent of Insurance shall cancel the registration of an insurer either wholly or in so far as it relates to a particular class of insurance business, as the case may be,—

- (a) if the insurer fails to comply with the provisions of section 7 or section 98 as to deposits, or
- (b) if the insurer is in liquidation or is adjudged an insolvent, or
- (c) if the business or a class of the business of the insurer has been transferred to any person or has been transferred to or amalgamated with the business of any other insurer, or
- (d) if the whole of the deposit made in respect of a class of insurance business has been

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<sup>1</sup> This word was substituted for the word "one" by s. 3 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> This word was substituted for the words "British India" by s. 3 of the Insurance (Amendment) Act, 1940 (20 of 1940).

<sup>3</sup> This sub-section was substituted (with retrospective effect), *ibid.*

*(Part II.—Provisions applicable to Insurers.)*

returned to the insurer under section 9;]  
<sup>1</sup>[or]

<sup>1</sup>[(e) if, in the case of an insurer specified in sub-clause (c) of clause (9) of section 2, the standing contract referred to in that sub-clause is cancelled or is suspended and continues to be suspended for a period of six months,

and the Superintendent of Insurance may cancel the registration of an insurer if the insurer has failed to have the registration renewed].

(5) When the Superintendent of Insurance withholds or cancels any registration under sub-section (3) or <sup>2</sup>[clause (a) of sub-section (4),] <sup>3</sup>[clause (e) of sub-section (4), or because the insurer has failed to have the registration renewed], he shall give notice in writing to the insurer of his decision, and the decision shall take effect on such date as he may specify in that behalf in the notice, such date not being less than one month nor more than two months from the date of the receipt of the notice in the ordinary course of transmission.

<sup>4</sup>[(5A) When the Superintendent of Insurance cancels any registration under clause (b), clause (c) or clause (d) of sub-section (4) the cancellation shall take effect on the date on which notice of the order of cancellation is served on the insurer.

(5B) When a registration is cancelled the insurer shall not, after the cancellation has taken effect, enter into any new contracts of insurance, but all rights and liabilities in respect of contracts of insurance entered into by him before such cancella-

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<sup>1</sup> The word "or", clause (e) and the words following clause (e) were added by s. 3 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words, brackets, letter and figure were substituted (with retrospective effect) for the word, brackets and figure "sub-section (4)" by s. 3 of the Insurance (Amendment) Act, 1940 (20 of 1940).

<sup>3</sup> These words, brackets, letter and figure were inserted by s. 3 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>4</sup> Sub-sections 5A to 5D were inserted (with retrospective effect) by s. 3 of the Insurance (Amendment) Act, 1940 (20 of 1940).

*(Part II.—Provisions applicable to Insurers.)*

tion takes effect shall, subject to the provisions of sub-section (5D), continue as if the cancellation had not taken place.

(5C) Where a registration is cancelled under clause (a) of sub-section (4), <sup>1</sup>[clause (e) of sub-section (4), or because the insurer has failed to have his registration renewed], the Superintendent of Insurance may at his discretion revive the registration, if the insurer within six months from the date on which the cancellation took effect makes the deposits required by section 7 or section 98, <sup>1</sup>[or has his standing contract restored or has had an application under sub-section (4) of section 3A accepted], as the case may be, and complies with any directions which may be given to him by the Superintendent of Insurance.

(5D) Where a registration is cancelled under sub-section (4) and the insurer is a company incorporated under the Indian Companies Act, 1913, or under the Indian Companies Act, 1882, or under the Indian Companies, Act, 1866, or under any Act repealed thereby, the Superintendent of Insurance shall, as soon as may be after the expiry of six months from the date on which the cancellation took effect, apply to the Court for an order to wind up the insurance company, or to wind up the affairs of the company in respect of a class of insurance business, unless the registration of the insurance company has been revived under sub-section (5C) or an application for winding up the company has been already presented to the Court. The Court may proceed as if an application under this sub-section were an application under sub-section (2) of section 53, or sub-section (1) of section 58, as the case may be.]

(6) The Superintendent of Insurance shall, on being satisfied that the applicant has fulfilled all the requirements of <sup>2</sup>[this section] applicable to him, <sup>3</sup>[register the insurer and grant him] a certificate of registration.

<sup>1</sup> These words, brackets, letter and figure were inserted by s. 3 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words were substituted for the words "the Act" by s. 3 of the Insurance (Amendment) Act, 1940 (20 of 1940).

<sup>3</sup> These words were substituted for the words "grant the insurer", *ibid.*

*(Part II.—Provisions applicable to Insurers.)*

[**3A.** (1) An insurer who has been granted a **Renewal of Registration.** certificate of registration under section 3 shall have the registration renewed annually for each year after that ending on the 31st day of December, 1941.

(2) An application for the renewal of a registration for any year shall be made by the insurer to the Superintendent of Insurance before the 31st day of December of the preceding year, and shall be accompanied as provided in sub-section (3) by evidence of payment of the prescribed fee which shall not exceed one thousand rupees for each class of insurance business, but may vary according to the volume of business done by the insurer in India in each class of insurance business to which the registration relates.

(3) The prescribed fee for the renewal of a registration for any year shall be paid into the Reserve Bank of India, or, where there is no office of that Bank, into the Imperial Bank of India acting as the agent of that Bank, or into any Government treasury, and the receipt shall be sent along with the application for renewal of the registration.

(4) If an insurer fails to apply for renewal of registration before the date specified in sub-section (2) the Superintendent of Insurance may, so long as an application to the Court under sub-section (5D) of section 3 has not been made, accept an application for renewal of the registration on receipt from the insurer of the fee payable with the application and such penalty, not exceeding the prescribed fee payable by him, as the Superintendent of Insurance may require:

Provided that an appeal shall lie to the Central Government from an order passed by the Superintendent of Insurance imposing a penalty on the insurer.

(5) The Superintendent of Insurance shall, on fulfilment by the insurer of the requirements of this section, renew the registration and grant him a certificate of renewal of registration.]

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<sup>1</sup> This section was inserted by s. 4 of the Insurance (Amendment) Act, 1941 (13 of 1941).

## (Part II.—Provisions applicable to Insurers.)

Minimum  
limits for  
annuities  
and other  
benefits  
secured by  
policies of life  
insurance.

4. (1) No insurer, not being <sup>1</sup>[a provident society as defined in Part III], or a Co-operative Life Insurance Society or a Mutual Insurance Company to which Part IV of this Act applies, shall pay or undertake to pay on any policy of life insurance issued after the commencement of this Act an annuity of fifty rupees or less or a gross sum of rupees five hundred or less exclusive of any profit or bonus provided that this shall not prevent an insurer from converting any policy into a paid up policy of any value or payment of surrender value of any amount.

<sup>2</sup>[(2) Nothing contained in this section shall apply to any policy of the description known as a group policy, where the number of persons covered by the policy is not less than fifty or such smaller number as may be approved by the Superintendent of Insurance and a standard form of the policy has been certified in writing by the Superintendent of Insurance to be a policy of such description.]

Restriction  
on name of  
insurer.

5. (1) An insurer shall not be registered by a name identical with that by which an insurer in existence is already registered, or so nearly resembling that name as to be calculated to deceive except when the insurer in existence is in the course of being dissolved and signifies his consent to the Superintendent of Insurance.

(2) If an insurer, through inadvertence or otherwise, is without such consent as aforesaid registered by a name identical with that by which an insurer already in existence whether previously registered or not is carrying on business or so nearly resembling it as to be calculated to deceive, the first-mentioned insurer shall, if called upon to do so by the Superintendent of Insurance on the application of the second-mentioned insurer, change his name within a time to be fixed by the Superintendent of Insurance:

<sup>1</sup> These words were substituted for the words "a provident society to which Part III" by s. 5 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> This sub-section was substituted, *ibid.*

*(Part II.—Provisions applicable to Insurers.)*

¶ I of 1912.

Provided that nothing in this section shall apply to any insurer carrying on business before the 27th day of January, 1937, under the Indian Life Assurance Companies Act, 1912.

(3) No insurer other than a provident society <sup>1</sup>[as defined in Part III], who begins to carry on insurance business after the commencement of this Act, shall adopt as its name and no such insurer carrying on business before the commencement of this Act shall continue after the expiry of six months from the commencement thereof to use as its name any combination of words which includes the word "provident".

6. No insurer incorporated after, or who commenced carrying on the business of life insurance in British India, whether solely or in common with any other business, after the 26th day of January, 1937, shall be registered unless he has as working capital a net sum of not less than fifty thousand rupees exclusive of the deposit to be made before registration under sub-section (5) of section 7 of this Act, and exclusive in the case of a company of any sums payable as preliminary expenses in the formation of the company. Requirements as to capital.

7. (1) Every insurer not being an insurer specified in sub-clause (c) of clause (9) of section 2 shall, in respect of the insurance business carried on by him in British India, deposit and keep deposited with the Reserve Bank of India in one of the offices in India of the Bank for and on behalf of the Central Government <sup>2</sup>[the amount hereafter specified, either in cash or in approved securities estimated at the market value of the securities on the day of deposit, or partly in cash and partly in approved securities so estimated]: Deposits.

(a) where the business done or to be done is life insurance only, two hundred thousand rupees;

<sup>1</sup> These words were substituted for the words "to which Part III applies" by s. 6 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words were substituted for the words "cash or approved securities estimated at the market value of the securities on the day of deposit of the amount hereafter specified, namely" (with retrospective effect) by s. 4 of the Insurance (Amendment) Act, 1940 (20 of 1940).



*(Part II.—Provisions applicable to Insurers.)*

- (b) where the business done or to be done is fire insurance only, one hundred and fifty thousand rupees;
- (c) where the business done or to be done is marine insurance only, one hundred and fifty thousand rupees;
- (d) where the business done or to be done <sup>1</sup>[is miscellaneous insurance only, that is to say, insurance which is not in the opinion of the Central Government principally or wholly of any kind or kinds included in clauses (a), (b), or (c)], one hundred and fifty thousand rupees;
- (e) where the business done or to be done <sup>2</sup>[is] life insurance and any one of the three classes specified in clauses (b), (c) and (d), three hundred thousand rupees of which two hundred thousand rupees shall be the deposit for life insurance business;
- (f) where the business done or to be done <sup>2</sup>[is] life insurance and any two of the three classes specified in clauses (b), (c) and (d), four hundred thousand rupees of which two hundred thousand rupees shall be the deposit for life insurance business;
- (g) where the business done or to be done <sup>2</sup>[is] life insurance and all three classes specified in clauses (b), (c) and (d), four hundred and fifty thousand rupees of which two hundred thousand rupees shall be the deposit for life insurance business;
- (h) where the business done or to be done does not include life insurance but <sup>2</sup>[is] any two of the classes specified in clauses (b), (c) and (d), two hundred and fifty thousand rupees;
- (i) where the business done or to be done does not include life insurance but <sup>2</sup>[is] all

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<sup>1</sup> These words were substituted for the words "is accident and miscellaneous insurance including workmen's compensation and motor car insurance" (with retrospective effect) by s. 4 of the Insurance (Amendment) Act, 1940 (20 of 1940).

<sup>2</sup> This word was substituted for the word "includes", *ibid.*

(Part II.—Provisions applicable to Insurers.)

three classes specified in clauses (b), (c) and (d), three hundred and fifty thousand rupees; <sup>1\*</sup>

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<sup>2</sup>[Provided that, where the business done or to be done is marine insurance only and relates exclusively to country craft or its cargo or both, the amount to be deposited under this sub-section shall be ten thousand rupees only.]

(2) Where the insurer is an insurer specified in sub-clause (c) of clause (9) of section 2, he shall be deemed to have complied with the provisions of this section as to deposits, if in respect of any class of insurance business <sup>3</sup>[carried on] by him in British India under a standing contract of the nature referred to in sub-clause (c) of clause (9) of section 2 a deposit of an amount one-and-a-half times that specified in sub-section (1) as the deposit for that class of insurance business has been made in the Reserve Bank of India in one of the offices in India of the Bank for and on behalf of the Central Government in cash or approved securities estimated at the market value of the securities on the day of deposit by or on behalf of the underwriters who are members of the Society of Lloyd's with whom he has his standing contract.

(3) Where the deposit is to be made by an insurer incorporated before, or carrying on the business of insurance in British India before, the 27th day of January, 1937, the deposit referred to in sub-section (1) may be made in not more than seven instalments, of which the first shall be not less than one-fourth of the total amount of the deposit and shall be paid before the application for registration is made, the second shall be not less than one-sixth of the balance of the deposit and shall be paid before <sup>4</sup>[the expiry of four months from the commencement of this Act], and the subsequent instalments shall be

<sup>1</sup> The word "and" and clause (j) were omitted by s. 4 of the Insurance (Amendment) Act, 1940 (20 of 1940).

<sup>2</sup> This proviso was added, *ibid.*

<sup>3</sup> These words were substituted for the word "transacted" by s. 3 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>4</sup> These words were substituted for the words and figures "the 1st day of January, 1939", *ibid.*

(Part II.—Provisions applicable to Insurers.)

of not less than the minimum amount required as the second instalment and shall be paid before the 1st day of January of each succeeding year:

Provided that in the case of insurers carrying on life insurance business only, the deposit may be made in not more than ten instalments, of which the first shall be not less than one-fourth of the total amount of the deposit, and shall be paid before the application for registration is made, the second shall be not less than one-ninth of the balance of the deposit, and shall be paid before <sup>1</sup>[the expiry of four months from the commencement of this Act], and the subsequent instalments shall be of not less than the minimum amount required as the second instalment, and shall be paid before the 1st day of January of each succeeding year.

(4) Notwithstanding anything contained in sub-section (3), in the case of an insurer <sup>2</sup>[to whom that sub-section applies,] not being an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2, and not being an insurer incorporated in or domiciled in the United Kingdom, the deposit referred to in sub-section (1) shall be made in two instalments of which the first shall be not less than one-half of the total amount of the deposit and shall be made before the application for registration is made, and the second shall be made before the expiry of one year from the date of registration.

(5) Where the deposit is to be made by an insurer neither incorporated before, nor carrying on insurance business in British India before, the 27th day of January, 1937, the deposit may be made in instalments of not less than one-fourth the total amount before the application for registration is made, not less than one-third the balance before the expiry of one year from the commencement of business in British India, and not less than one-half the residue before the expiry of two years from the commencement of business in British India, and the balance before the expiry of three years from the commencement of business in British India:

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<sup>1</sup> These words were substituted for the words and figures "the 1st day of January, 1939" by s. 3 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>2</sup> These words were inserted, *ibid.*

*(Part II.—Provisions applicable to Insurers.)*

Provided that in the case of any insurer not being an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2, and not being an insurer incorporated in or domiciled in the United Kingdom, the deposit shall be made in full before the application for registration is made.

(6) No class of insurance business in addition to the class or classes in respect of which an insurer is already liable to make a deposit under sub-section (1) or sub-section (2) shall be undertaken by the insurer until the deposit to which he is already liable has been made in full, and the additional deposit required in respect of the additional class of business or so much thereof as under the provisions of sub-section (3), (4) or (5) is to be made before the application for registration, has also been made in full.

VI of 1912.

(7) Securities already deposited with the Controller of Currency in compliance with the Indian Life Assurance Companies Act, 1912, shall be transferred by him to the Reserve Bank of India and shall, to the extent of their market value <sup>1</sup>[as at the date of the commencement of this Act], be deemed to be deposited under this Act <sup>2</sup>[as the instalment or as part of the instalment to be made under the foregoing provisions of this section before the application for registration is made whether any such application is or is not in fact made].

(8) A deposit made in cash shall be held by the Reserve Bank of India to the credit of the insurer and shall <sup>3</sup>[except to the extent, if any, to which the cash has been invested in securities under sub-section (9A)], be returnable to the insurer in cash in any case in which under the provisions of this Act a deposit is to be returned; and any interest accruing due and collected on securities deposited under sub-section (1) or sub-section (2) shall be paid to the

<sup>1</sup> These words were substituted for the words "on the day of the first deposit made in compliance with this Act" (with retrospective effect) by s. 4 of the Insurance (Amendment) Act, 1940 (20 of 1940).

<sup>2</sup> These words were substituted (with retrospective effect) for the words "in respect of the life insurance business of the insurer", *ibid.*

<sup>3</sup> These words were inserted (with retrospective effect), *ibid.*

*(Part II.—Provisions applicable to Insurers.)*

insurer, subject only to deduction of the normal commission chargeable for the realization of interest.

<sup>1</sup>[(9) The insurer may at any time replace any securities deposited by him under this section with the Reserve Bank of India either by cash or by other approved securities or partly by cash and partly by other approved securities, provided that such cash, or the value of such other approved securities estimated at the market rates prevailing at the time of replacement, or such cash together with such value as the case may be, is not less than the value of the securities replaced estimated at the market rates prevailing when they were deposited.

(9A) The Reserve Bank of India shall, if so requested by the insurer,—

- (a) sell any securities deposited by him with the Bank under this section and hold the cash realised by such sale as deposit, or
- (b) invest in approved securities specified by the insurer the whole or any part of a deposit held by it in cash or the whole or any part of cash received by it on the sale of or on the maturing of securities deposited by the insurer, and hold the securities in which investment is so made as deposit, <sup>2</sup>[and may charge the normal commission on such sale or on such investment].

(9B) Where sub-section (9A) applies,—

- (a) if the cash realised by the sale of or on the maturing of the securities (excluding in the former case the interest accrued) falls short of the market value of the securities at the date on which they were deposited with the Bank, the insurer shall make good the deficiency by a further deposit either in cash or in approved securities estimated at the market value of the securities on the day on

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<sup>1</sup> Sub-sections (9), (9A) and (9B) were substituted for the original sub-section (9) (with retrospective effect) by s. 4 of the Insurance (Amendment) Act, 1940 (20 of 1940).

<sup>2</sup> These words were added by s. 7 of the Insurance (Amendment) Act, 1941 (13 of 1941).

*(Part II.—Provisions applicable to Insurers.)*

which they are deposited, or partly in cash and partly in approved securities so estimated, within a period of two months from the date on which the securities matured or were sold or where the securities matured or were sold before the 21st day of March 1940, within a period of four months from the commencement of the Insurance (Amendment) Act, 1940; and unless he does so the insurer shall be deemed to have failed to comply with the requirements of this section as to deposits; and

- (b) if the cash realised by the sale of or on the maturing of the securities (excluding in the former case the interest accrued) exceeds the market value of the securities at the date on which they were deposited with the Bank, the Central Government may, if satisfied that the full amount required to be deposited under sub-section (1) is in deposit, direct the Reserve Bank to return the excess.]

(10) If any part of a deposit made under this section is used in the discharge of any liability of the insurer, the insurer shall deposit such additional sum in cash or approved securities <sup>1</sup>[estimated at the market value of the securities on the day of deposit, or partly in cash and partly in such securities], as will make up the amount so used. The insurer shall be deemed to have failed to comply with the requirements of sub-section (1), unless the deficiency is supplied within a period of two months from the date when the deposit or any part thereof is so used for discharge of liabilities.

8. (1) Any deposit made under section 7 <sup>2</sup>[or section 98] shall be deemed to be part of the assets of the insurer but shall not be susceptible of any assignment or charge; nor shall it be available for the discharge of any liability of the insurer other than liabilities arising out of policies of insurance issued

Reservation  
of deposits.

<sup>1</sup> These words were inserted by s. 4 of the Insurance (Amendment) Act, 1940 (20 of 1940).

<sup>2</sup> These words and figures were inserted by s. 4 of the Insurance (Amendment) Act, 1939 (11 of 1939).

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by the insurer so long as any such liabilities remain undischarged; nor shall it be liable to attachment in execution of any decree except a decree obtained by a policy-holder of the insurer in respect of a debt due upon a policy which debt the policy-holder has failed to realise in any other way.

(2) Where a deposit is made in respect of life insurance business the deposit made in respect thereof shall not be available for the discharge of any liability of the insurer other than liabilities arising out of policies of life insurance issued by the insurer.

Refund of  
deposits.

9. Where an insurer has ceased to carry on in British India any class of insurance business in respect of which a deposit has been made under section 7 <sup>1</sup>[or section 98] and his liabilities in British India in respect of business of that class have been satisfied or are otherwise provided for, the Court may, on the application of the insurer, order the return to the insurer of so much of the deposit as does not relate to the classes of insurance, if any, which he continues to carry on.

Separation  
of accounts  
and funds.

10. (1) Where the insurer carries on business of more than one of the classes specified in clauses (a), (b), (c) and (d) of sub-section (1) of section 7, he shall keep a separate account of all receipts and payments in respect of each such class of insurance business <sup>2</sup>[and where the insurer carries on business of the class specified in clause (d) of that sub-section whether alone or in conjunction with business of another class, he shall, unless the Superintendent of Insurance waives this requirement in writing, keep a separate account of all receipts and payments in respect of each such sub-class of the class specified in clause (d) as may be prescribed in this behalf:

Provided that no sub-class of the class of insurance business specified in clause (d) of sub-section (1) of section 7 shall be prescribed under this sub-section if the insurance business comprised in

<sup>1</sup> These words and figures were inserted by s. 5 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>2</sup> These words, brackets and letters were added by s. 8 of the Insurance (Amendment) Act, 1941 (13 of 1941).

(Part II.—Provisions applicable to Insurers.)

the sub-class consists of insurance contracts which are terminable by the insurer at intervals not exceeding twelve months and under which, if a claim arises, the insurer's liability to pay benefit ceases within one year of the date on which the claim arose.]

(2) Where the insurer carries on the business of life insurance, <sup>1</sup>[all receipts due in respect of such business], shall be carried to and shall form a separate fund to be called the life insurance fund and the deposit made by the insurer in respect of life insurance business shall be deemed to be part of such fund.

(3) The life insurance fund shall be as absolutely the security of the life policy-holders as though it belonged to an insurer carrying on no other business than life insurance business and shall not be liable for any contracts of the insurer for which it would not have been liable had the business of the insurer been only that of life insurance and shall not be applied directly or indirectly <sup>2</sup>\* \* \* \* for any purposes <sup>3</sup>[other than those of the life insurance business of the insurer].

11. (1) Every insurer, in the case of an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2 in respect of all insurance business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, shall at the expiration of each calendar year prepare with reference to that year—

Accounts and  
balance-sheet.

- (a) in accordance with the regulations contained in Part I of the First Schedule, a balance-sheet in the form set forth in Part II of that Schedule;
- (b) in accordance with the regulations contained in Part I of the Second Schedule, a profit and loss account in the forms set

<sup>1</sup> These words were substituted for the words "the excess of receipts over payments in respect of such business" by s. 8 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> The words and figures "save as provided in section 49" were omitted, *ibid.*

<sup>3</sup> These words were substituted for the words "other than those of life insurance", *ibid.*



*(Part II.—Provisions applicable to Insurers.)*

forth in Part II of that Schedule, except where the insurer carries on business of one class only of the classes specified in clauses (a), (b) and (c) of sub-section (1) of section 7 and no other business;

- (c) <sup>1</sup>[in respect of each class or sub-class of insurance business for which he is required under sub-section (1) of section 10 to keep a separate account of receipts and payments] in accordance with the regulations contained in Part I of the third Schedule, a revenue account in the form or forms set forth in Part II of that Schedule applicable to <sup>2</sup>[that class or sub-class of insurance business].

(2) Unless the insurer is a company <sup>3</sup>[, as defined in clause (2) of sub-section (1) of section 2 of the Indian Companies Act, 1918], the accounts and statements referred to in sub-section (1) shall be signed by the insurer, or in the case of a company by the chairman, if any, and two directors and the principal officer of the company, or in the case of a firm by two partners of the firm, and shall be accompanied by a statement containing the names and descriptions of the persons in charge of the management of the business during the period to which such accounts and statements refer and by a report by such persons on the affairs of the business during that period. VII of 1913.

(3) Where an insurer carrying on the business of insurance at the commencement of this Act has prepared the balance-sheet and accounts required by the Indian Life Assurance Companies Act, 1912, or has based his accounts upon the financial and not the calendar year, the provisions of this section shall, if the Central Government so directs in any case apply until the 31st day of December, 1939, as VI of 1912.

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<sup>1</sup> These words, brackets and figures were substituted for the words "in respect of each class of insurance business carried on by him" by s. 9 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words were substituted for the words "that class of insurance business", *ibid.*

<sup>3</sup> These words, brackets and figures were substituted for the words and figures "to which the Indian Companies Act, 1913, applies", *ibid.*

*(Part II.—Provisions applicable to Insurers.)*

if in sub-section (1) references to the calendar year were references to the financial year.

**12.** The balance-sheet, profit and loss account, **Audit.** revenue account and profit and loss appropriation account of every insurer, in the case of an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2 in respect of all insurance business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, shall, unless they are subject to audit under the Indian Companies Act, 1913, be audited annually by an auditor, and the auditor shall in the audit of all such accounts have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by section 145 of the Indian Companies Act, 1913.

▼ II of 1913.

▼ II of 1913.

**13.** (1) Every insurer carrying on life insurance business shall, in respect of the life insurance business transacted by him in India, and also in the case of an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2 in respect of all life insurance business transacted by him, once at least in every five years cause an investigation to be made by an actuary into the financial condition of the life insurance business carried on by him, including a valuation of his liabilities in respect thereto and shall cause an abstract of the report of such actuary to be made in accordance with the regulations contained in Part I of the Fourth Schedule and in conformity with the requirements of Part II of that Schedule. **Actuarial report and abstract.**

(2) The provisions of sub-section (1) regarding the making of an abstract shall apply whenever at any other time an investigation into the financial condition of the insurer is made with a view to the distribution of profits or an investigation is made of which the results are made public.

(3) There shall be appended to every such abstract as is referred to in sub-section (1) or sub-section (2) a certificate signed by the principal officer of the insurer that full and accurate particulars of every policy under which there is a liability either actual

*(Part II.—Provisions applicable to Insurers.)*

or contingent have been furnished to the actuary for the purpose of the investigation.

(4) There shall be appended to every such abstract a statement, in conformity with the requirements of Part II of the Fifth Schedule and prepared in accordance with the regulations contained in Part I of that Schedule, of the life insurance business in force at the date to which the accounts of the insurer are made up for the purposes of such abstract :

Provided that, if the investigation, referred to in sub-sections (1) and (2) is made annually by any insurer, the statement need not be appended every year but shall be appended at least once in every five years.

(5) Where an investigation into the financial condition of an insurer is made as at a date other than the expiration of the year of account, the accounts for the period since the expiration of the last year of account and the balance-sheet as at the date at which the investigation is made shall be prepared and audited in the manner provided by this Act.

<sup>1</sup>[(6) The provisions of this section relating to life insurance business shall apply also to any such sub-class of insurance business included in the class 'Miscellaneous Insurance' as may be prescribed under sub-section (1) of section 10; and the Superintendent of Insurance may authorise such modifications and variations of the regulations contained in Part I of the Fourth and Fifth Schedules and of the requirements of Part II of those Schedules as may be necessary to facilitate their application to any such sub-class of insurance business :

Provided that, if the Superintendent of Insurance is satisfied that the number and amount of the transactions carried out by an insurer in any such sub-class of insurance business is so small as to render periodic investigation and valuation unnecessary, he may exempt that insurer from the operation of this sub-section in respect of that sub-class of insurance business.]

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<sup>1</sup> This sub-section was added by s. 10 of the Insurance (Amendment) Act, 1941 (13 of 1941).

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14. Every insurer, in the case of an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2 in respect of all business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, shall maintain—

Register of policies and register of claims.

- (a) a register or record of policies, in which shall be entered, in respect of every policy issued by the insurer, the name and address of the policy-holder, the date when the policy was effected and a record of any transfer, assignment or nomination of which the insurer has notice, and
- (b) a register or record of claims, in which shall be entered every claim made together with the date of the claim, the name and address of the claimant and the date on which the claim was discharged, or, in the case of a claim which is rejected, the date of rejection and the grounds therefor.

15. (1) The audited accounts and statements referred to in section 11 and the abstract and statement referred to in section 13 shall be printed, and four copies thereof shall be furnished as returns to the Superintendent of Insurance <sup>1</sup>[in the case of the accounts and statements referred to in section 11 within six months and in the case of the abstract and statement referred to in section 13 within nine months] from the end of the period to which they refer. 2\* \* \* \* :

Submission of returns.

Provided that the said period of six months shall in the case of insurers having their principal place of business or domicile outside India and in the case of insurers constituted, incorporated or domiciled in British India but also carrying on business outside India be extended by three months, and provided further that the Central Government may in any case extend the time allowed by this sub-section

<sup>1</sup> These words and figures were substituted for the words "within six months" by s. 11 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> The words "The Superintendent of Insurance may extend the time allowed for furnishing the abstract and statement referred to in section 13 by a period not exceeding three months" were omitted, *ibid*.

*(Part II.—Provisions applicable to Insurers.)*

for the furnishing of such returns by a further period not exceeding three months.

(2) Of the four copies so furnished one shall be signed in the case of a company by the chairman and two directors and by the principal officer of the company and, if the company has a managing director or managing agent, by that director or managing agent, in the case of a firm, by two partners of the firm, and, in the case of an insurer being an individual, by the insurer himself

(3) Where the insurer's principal place of business or domicile is outside British India, he shall forward to the Superintendent of Insurance, along with the documents referred to in section 11, the balance-sheet, profit and loss account and revenue account and the valuation reports and valuation statements, if any, which the insurer is required to file with the public authority of the country in which the insurer is constituted, incorporated or domiciled, or, where such documents are not required to be filed, a certified statement showing the total assets and liabilities of the insurer at the close of the period covered by the said documents and his total income and expenditure during that period.

Returns by  
insurers  
established  
outside  
British India.

16. (1) Where by the law of the country in which an insurer, not being an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2, is constituted, incorporated or domiciled, the insurer is required to prepare and to furnish to a public authority of that country documents of substantially the same nature as the documents required to be furnished as returns in accordance with the provisions of section 15, the provisions of sub-section (2) of this section shall apply to such insurer in lieu of the provisions of sections 11, 12, 13 and 15.

(2) The insurer shall, within the time specified in sub-section (1) of section 15, furnish to the Superintendent of Insurance four certified copies in the English language of every balance-sheet, account, abstract, report and statement supplied to the public authority referred to in sub-section (1) of this section, and in addition thereto, <sup>1</sup>[four certified copies] in the

<sup>1</sup> These words were substituted for the words "four copies" by s. 7 of the Insurance (Amendment) Act, 1939 (11 of 1939).

(Part II.—Provisions applicable to Insurers.)

English language of each of the following statements, namely:—

- (a) a statement <sup>1</sup>[audited by a person duly qualified under the law of the insurer's country] showing the assets held by the insurer in India <sup>2</sup>[as at the date of any balance-sheet so furnished];
- (b) <sup>3</sup>[for each class or sub-class of insurance business for which he is required under sub-section (1) of section 10 to keep a separate account of receipts and payments, a revenue account for the period covered by any account so furnished] in the form or forms set forth in Part II of the Third Schedule applicable to <sup>4</sup>[that class or sub-class of insurance business] <sup>1</sup>[and similarly audited,] showing separately with respect to business transacted by the insurer in India the details required to be supplied in a revenue account furnished under this clause of this sub-section;
- <sup>5</sup>[(c) a separate abstract of the valuation report in respect of all business transacted in India in each class or sub-class of insurance business to which section 13 refers, prepared in the manner required by that section, and];
- (d) a declaration in the prescribed form stating that all amounts received by the insurer directly or indirectly whether from his head office or from any other source outside India have been shown in the revenue account except such sums as properly appertain to the capital account.

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<sup>1</sup> These words were inserted by s. 7 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>2</sup> These words were added by s. 12 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>3</sup> These words, brackets and figures were substituted for the words "for each class of insurance business carried on by him, a revenue account", *ibid.*

<sup>4</sup> These words were substituted for the words "that class of business", *ibid.*

<sup>5</sup> This clause was substituted *ibid.*

## (Part II.—Provisions applicable to Insurers.)

Exemption from certain provisions of the Indian Companies Act, 1913.

17. Where an insurer, being a company incorporated under the Indian Companies Act, 1913 <sup>1</sup>[or under <sup>VII of 1913</sup> the Indian Companies Act, 1882, or under the Indian <sup>VI of 1882</sup> Companies Act, 1866, or under any Act repealed <sup>X of 1866</sup> thereby,] in any year furnishes <sup>2</sup>[his balance-sheet and accounts] in accordance with the provisions of section 15, he may at the same time send to the Registrar of Companies <sup>3</sup>[copies of such balance-sheet and accounts]; and <sup>4</sup>[where such copies are so sent] it shall not be necessary for the company <sup>5</sup>[to file copies of the balance-sheet and accounts] with the Registrar as required by sub-section (1) of section 134 of that Act and <sup>6</sup>[such copies so sent] <sup>7</sup>[shall be chargeable with the same fees and] shall be dealt with in all respects as if they were filed in accordance with that section.

This Act not to apply to preparation of accounts, etc., for periods prior to this Act coming into force.

<sup>8</sup>[17A. Nothing in this Act shall apply to the preparation of accounts by an insurer and the audit and submission thereof in respect of any accounting year which has expired prior to the commencement of this Act, and notwithstanding the other provisions of this Act, such accounts shall be prepared, audited and submitted in accordance with the law in force immediately before the commencement of this Act.]

Furnishing reports.

18. Every insurer shall furnish to the Superintendent of Insurance a certified copy of every report on the affairs of the concern which is submitted to the members or policy-holders of the insurer immediately after its submission to the members or policy-holders as the case may be.

<sup>1</sup> These words were inserted by s. 8 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>2</sup> These words were substituted for the words "his accounts and balance-sheet", *ibid.*

<sup>3</sup> These words were substituted for the words "a copy of such accounts and balance-sheet", *ibid.*

<sup>4</sup> These words were substituted for the words "where such copy is so sent", *ibid.*

<sup>5</sup> These words were substituted for the words "to file a balance-sheet", *ibid.*

<sup>6</sup> These words were substituted for the words "the copy of the accounts and balance-sheet so sent", *ibid.*

<sup>7</sup> These words were inserted by s. 13 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>8</sup> This section was inserted by s. 9 of the Insurance (Amendment) Act, 1939 (11 of 1939).

*(Part II.—Provisions applicable to Insurers.)*

19. Every insurer, being a company or body incorporated under any law for the time being in force in British India, shall furnish to the Superintendent of Insurance an abstract of the proceedings of every general meeting within thirty days from the holding of the meeting to which it relates.

Abstract of  
Proceedings  
of general  
meetings.

20. (1) Every return furnished to the Superintendent of Insurance or a certified copy thereof shall be kept by the Superintendent and shall be open to inspection; and any person may procure a copy of any such return, or of any part thereof, on payment of a fee of six annas for every hundred words or fractional part thereof required to be copied, any five figures being deemed equivalent to one word.

Custody and  
inspection of  
documents  
and supply of  
copies.

(2) A printed or certified copy of the accounts, statements and abstract furnished in accordance with the provisions of section 15 or section 16 shall, on the application of any shareholder or policyholder made at any time within two years from the date on which the document was so furnished, be supplied to him by the insurer within fourteen days when the insurer is constituted, incorporated or domiciled in British India and in any other case within one month of such application.

(3) A copy of the memorandum and articles of association of the insurer, if a company, shall on the application of any policyholder, be supplied to him by the insurer on payment of one rupee.

21. (1) If it appears to the Superintendent of Insurance that any return furnished to him under the provisions of this Act is inaccurate or defective in any respect, he may—

Powers of  
Superin-  
tendent of  
Insurance  
regarding  
returns.

(a) require from the insurer such further information, certified if he so directs by an auditor or actuary, as he may consider necessary to correct or supplement such return;

(b) call upon the insurer to submit for his examination at the principal place of business of the insurer in British India any book of account, register or other document or to supply any statement which he may specify in a notice served on the insurer for the purpose;



*(Part II.—Provisions applicable to Insurers.)*

- (c) examine any officer of the insurer on oath in relation to the return;
- (d) decline to accept any such return unless the inaccuracy has been corrected or the deficiency has been supplied before the expiry of one month from the date on which the requisition asking for correction of the inaccuracy or supply of the deficiency was delivered to the insurer and if he declines to accept any such return, the insurer shall be deemed to have failed to comply with the provisions of section 15 or section 16 relating to the furnishing of returns.

(2) The Court may on the application of an insurer and after hearing the Superintendent cancel any order made by the Superintendent under clause (a), (b) or (c) of sub-section (1) or may direct the acceptance of any return which the Superintendent has declined to accept, if the insurer satisfies the Court that the action of the Superintendent was in the circumstances unreasonable:

<sup>1</sup>[Provided that no application under this sub-section shall be entertained unless it is made before the expiration of four months from the time when the Superintendent of Insurance made the order or declined to accept the return.]

Power of  
Superin-  
tendent of  
Insurance to  
order re-  
valuation. .

22. If it appears to the Superintendent of Insurance that an investigation or valuation to which section 13 refers <sup>2</sup>[or an abstract of a valuation report furnished under clause (c) of sub-section (2) of section 16] does not properly indicate the condition of the affairs of the insurer by reason of the faulty basis adopted in the valuation, he may, after giving notice to the insurer and giving him an opportunity to be heard, cause an investigation and valuation to be made at the expense of the insurer by an actuary appointed by the insurer for this purpose and approved by the Superintendent of Insurance.

Evidence of  
documents.

23. (1) Every return furnished to the Superintendent of Insurance, which has been certified by the Superintendent to be a return so furnished, shall be deemed to be a return so furnished.

<sup>1</sup> This proviso was added by s. 14 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words, brackets, letter and figures were inserted by s. 15, *ibid.*

(Part II.—Provisions applicable to Insurers.—Investment, Loans and Management.)

(2) Every document, purporting to be certified by the Superintendent of Insurance to be a copy of a return so furnished, shall be deemed to be a copy of that return and shall be received in evidence as if it were the original return, unless some variation between it and the original return is proved.

24. [Summary of returns to be published.]  
Omitted by s. 16 of the Insurance (Amendment) Act, 1941 (13 of 1941).

25. No insurer shall publish in British India any return in a form other than that in which it has been furnished to the Superintendent of Insurance: Returns to be published in statutory forms.

Provided that nothing contained in this section shall prevent an insurer from publishing a true and accurate abstract from such returns for the purposes of publicity.

26. Whenever any alteration occurs or is made which affects any of the matters which are required under the provisions of sub-section (2) of section 3 to accompany an application by an insurer for registration, the insurer shall forthwith furnish to the Superintendent of Insurance full particulars of such alteration. Alterations in the particulars furnished with application for registration to be reported.

<sup>1</sup>[All such particulars shall be authenticated in the manner required by that sub-section for the authentication of the matters therein referred to, and, where the alteration affects the assured rates, advantages, terms and conditions offered in connection with life insurance policies, the actuarial certificate referred to in clause (f) of the said sub-section shall accompany the particulars of the alteration.]

#### INVESTMENT, LOANS AND MANAGEMENT.

27. (1) Every insurer incorporated or domiciled in British India shall, subject to the provisions of sub-section (3), at all times invest and hold invested assets equivalent to not less than fifty-five per cent. of the sum of the amount of his liabilities to holders of life insurance policies in India on account of matured claims and the amount required to meet the liability on policies of life insurance maturing for payment in India, less the amount of any deposit Investment of assets and restriction on loans.

<sup>1</sup> This sentence was added by s. 17 of the Insurance (Amendment) Act, 1941 (13 of 1941).

(Part II.—Investment, Loans and Management.)

made under section 7 <sup>1</sup>[or section 98] by the insurer in respect of his life insurance business and less any amount due to the insurer for loans granted by him on policies of life insurance <sup>2</sup>[maturing for payment in India and within their surrender values], in the manner following, namely, twenty-five per cent. of the said sum in Government securities and a further sum equal to not less than thirty per cent. of the said sum in Government securities or other approved securities or securities of or guaranteed as to principal and interest by the Government of the United Kingdom.

*Explanation.*—The provisions of this sub-section shall apply also to insurers incorporated in or domiciled in the United Kingdom.

(2) An insurer incorporated or domiciled elsewhere than in British India or the United Kingdom shall, subject to the provisions of sub-section (3), at all times invest and hold invested assets equivalent to not less than the sum of his liabilities to holders of life insurance policies in India on account of matured claims and the amount required to meet the liability on policies of life insurance maturing for payment in India, less the amount of any deposit made under section 7 <sup>1</sup>[or section 98] by the insurer in respect of his life insurance business and less any amount due to the insurer on loans granted by him on policies of life insurance <sup>2</sup>[maturing for payment in India and within their surrender values], in the manner following, namely, thirty-three and one-third per cent. of the said sum in Government securities, and the balance in Government securities or other approved securities or securities of or guaranteed as to principal and interest by the Government of the United Kingdom.

(3) An insurer carrying on business at the commencement of this Act to whom sub-section (1) or sub-section (2) applies shall before the expiry of four years from the commencement of this Act invest the total amount required to be invested by those sub-sections in the manner required thereby:

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<sup>1</sup> These words and figures were inserted by s. 10 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>2</sup> These words were inserted, *ibid.*

*(Part II.—Investment, Loans and Management.)*

Provided that of such total amount the insurer shall have invested not less than one-fourth in securities of the nature specified in sub-section (1) before the expiry of one year, not less than one-half before the expiry of two years. and not less than three-fourths before the expiry of three years from the <sup>1</sup>[30th day of June, 1939].

(4) The assets required by this section to be held invested by an insurer to whom sub-section (2) applies shall be held in trust for the discharge of claims of the nature referred to in sub-section (2) and shall be vested in trustees resident in British India and approved by the Central Government by an instrument of trust which shall be executed by the insurer and approved by the Central Government and shall define the manner in which alone the subject matter of the trust shall be dealt with.

*Explanation.*—Sub-sections (2) and (4) shall apply to an insurer incorporated in British India whose share capital to the extent of one-third is owned by, or the members of whose Governing Body to the extent of one-third consists of, individuals domiciled elsewhere than in British India or the United Kingdom.

28. <sup>2</sup>[(1) Every insurer registered under this Act carrying on the business of life insurance shall every year, within thirty-one days from the beginning of the year, submit to the Superintendent of Insurance a statement showing as at the 31st day of December of the preceding year the assets held invested in accordance with section 27, and all other particulars necessary to establish that the requirements of that section have been complied with, and such statement shall be certified by a principal officer of the insurer.

Statement of investments of assets.

(2) Every such insurer shall also furnish, within fifteen days from the last day of March, June and September, a statement certified as aforesaid showing as at the end of each of the said months the assets held invested in accordance with section 27.

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<sup>1</sup> These words and figures were substituted for the words "commencement of this Act" by s. 5 of the Insurance (Amendment) Act, 1940 (20 of 1940).

<sup>2</sup> These sub-sections were substituted for the original sub-section (1) by s. 18 of the Insurance (Amendment) Act, 1941 (13 of 1941).

*(Part II.—Investment, Loans and Management.)*

(3) The Superintendent of Insurance may at his discretion require any insurer to whom sub-section (1) applies to submit before the 1st day of August in each or any year a statement of the nature referred to in sub-section (1), certified as required by that sub-section and prepared as at the 30th day of June.

(4) In the case of an insurer having his principal place of business or domicile outside British India, the Superintendent of Insurance may, on application made by the insurer, extend the periods of fifteen and thirty-one days mentioned in the foregoing sub-sections to thirty days and sixty days, respectively.]

<sup>1</sup>[(5)] The Superintendent of Insurance shall be entitled at any time to take such steps as he may consider necessary for the inspection or verification of the assets invested in compliance with section 27 <sup>2</sup>[or for the purpose of securing the particulars necessary to establish that the requirements of that section have been complied with.] <sup>3</sup>[The insurer shall comply with any requisition made in this behalf by the Superintendent of Insurance, and if he fails to do so within two months from the receipt of the requisition he shall be deemed to have made default in complying with the requirements of this section.]

## Prohibition of loans.

29. <sup>4</sup>[(1)] No insurer shall grant loans or temporary advances either on hypothecation of property or on personal security or otherwise, except loans on life policies issued by him within their surrender value, to any director, manager, managing agent, actuary, auditor or officer of the insurer if a company, or where the insurer is a firm, to any partner therein, or to any other company or firm in which any such director, manager, managing agent, actuary, officer or partner holds the position of a director, manager, managing agent, actuary, officer or partner:

Provided that nothing herein contained shall apply to loans made by an insurer to a banking company:

<sup>1</sup> The original sub-section (2) was re-numbered (5) by s. 18 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words were inserted by s. 6 of the Insurance (Amendment) Act, 1940 (20 of 1940).

<sup>3</sup> These words were substituted for the words "and the insurer shall comply with all requisitions made by the Superintendent in that behalf", *ibid.*

<sup>4</sup> Section 29 was re-numbered as sub-section (1) of that section by s. 19 of the Insurance (Amendment) Act, 1941 (13 of 1941).

*(Part II.—Investment, Loans and Management.)*

Provided further that every existing loan to any director, manager, managing agent, auditor, actuary, officer or partner, notwithstanding any contract to the contrary, shall be repaid within one year from the commencement of this Act, and in case of default, such defaulting director, manager, managing agent, auditor, actuary, officer or partner shall cease to hold office on the expiry of one year from the commencement of this Act:

Provided further that nothing in this section shall prohibit a company from granting such loans or advances to a subsidiary company or to any other company of which the company granting the loan or advance is a subsidiary company.

<sup>1</sup>[(2) The provisions of section 86D of the Indian Companies Act, 1913, shall not apply to a loan granted to a director of an insurer being a company, if the loan is one granted on the security of a policy on which the insurer bears the risk and the policy was issued to the director on his own life, and the loan is within the surrender value of the policy.]

30. If by reason of a contravention of any of the provisions of section 27 or section 29, any loss is sustained by the insurer or by the policy-holders, every director, manager, managing agent, officer or partner who is knowingly a party to such contravention shall, without prejudice to any other penalty to which he may be liable under this Act, be jointly and severally liable to make good the amount of such loss

*Liability of directors, etc., for loss due to contraventions of sections 27 and 29.*

31. None of the assets in British India of any insurer shall, except in the case of deposits made with the Reserve Bank of India under section 7 <sup>2</sup>[or section 98] or in so far as assets are required to be vested in trustees by sub-section (4) of section 27, be kept otherwise than <sup>3</sup>[in the name of a public officer approved by the Central Government, or] in the corporate name of the undertaking, if a company, or in the name of the partners, if a firm, or in the name of the proprietor, if an individual.

*Assets of insurer how to be kept.*

<sup>1</sup> This sub-section was added by s. 19 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words and figures were inserted by s. 12 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>3</sup> These words were inserted, *ibid.*

*(Part II.—Investment, Loans and Management.—  
Inspection.)*

Limitation on  
employment of  
managing  
agents and on  
the remunera-  
tion payable  
to them.

32. (1) No insurer shall, after the commencement of this Act, appoint a managing agent for the conduct of his business.

(2) Where any insurer engaged in the business of insurance before the commencement of this Act employs a managing agent for the conduct of his business, then, notwithstanding anything to the contrary contained in the Indian Companies Act, 1913, and notwithstanding anything to the contrary VII of 1913, contained in the articles of the insurer, if a company, or in any agreement entered into by the insurer, such managing agent shall cease to hold office on the expiry of three years from the commencement of this Act and no compensation shall be payable to him by the insurer by reason only of the premature termination of his employment as managing agent.

(3) After the commencement of this Act, notwithstanding anything contained in the Indian Companies Act, 1913, and notwithstanding anything VII of 1913, to the contrary contained in any agreement entered into by an insurer or in the articles of association of an insurer being a company, no insurer shall pay to a managing agent and no managing agent shall accept from an insurer as remuneration for his services as managing agent more than two thousand rupees per month in all, including salary and commission and other remuneration payable to and receivable by him, for his services as managing agent.

## INSPECTION.

Power of  
Superinten-  
dent of In-  
surance to  
order inspec-  
tion.

33. (1) If the Superintendent of Insurance has reason to believe that the interests of the policy-holders of an insurer are in danger or that an insurer is unable to meet his obligations or has made default in complying with any of the provisions of this Act, or that an offence under this Act has been or is likely to be committed by an insurer or any officer of an insurer, or if he receives a requisition in this behalf signed by shareholders of an insurer being a company not less in number than one-tenth of the whole body of shareholders and holding not less than one-tenth of the whole share capital or if he receives a requisition in this behalf signed by not less than fifty policy-holders holding policies of life insurance that have been in force for not less than

## (Part II.—Inspection.)

three years and are of the total value of not less than fifty thousand rupees and supported by an affidavit, he may, after giving notice to the insurer and giving him an opportunity to be heard, <sup>1</sup>[order an investigation of the affairs of the insurer to be made by an auditor or actuary, or by both an auditor and an actuary appointed simultaneously, or first by an auditor only or an actuary only and afterwards by an actuary or auditor, or may himself make such investigation:

Provided that an auditor or actuary appointed for this purpose by the Superintendent of Insurance shall not be an auditor or actuary in the employ of the insurer.]

(2) The Court may, on the application of an insurer and after giving notice to and hearing the Superintendent of Insurance, forbid such action by the Superintendent, if the insurer satisfies the Court that it is unnecessary in the circumstances:

<sup>2</sup>[Provided that no application under this subsection shall be entertained unless it is made before the expiration of three months from the date on which the Superintendent of Insurance intimates to the insurer his intention to take such action.]

<sup>3</sup>[(3) The results of any investigation made under this section shall be recorded in writing by the auditor or actuary appointed or by the Superintendent of Insurance, as the case may be, and four copies of the record shall be supplied to the Superintendent of Insurance; and when the investigation is completed a copy of such record, or where both an auditor and an actuary have been appointed, of each such record, shall be furnished by the Superintendent of Insurance to the insurer and to the shareholders or the policy-holders who have sent a requisition for such an investigation.]

(4) The Superintendent of Insurance may require the insurer to comply within a time to be specified

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<sup>1</sup> These words were substituted for the words "appoint an auditor or actuary or both, not being an auditor or actuary in the employ of the insurer, to investigate the affairs of the insurer, or may himself make such investigation" by s. 20 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> This proviso was added, *ibid.*

<sup>3</sup> This sub-section was substituted, *ibid.*



(Part II.—*Inspection.—Amalgamation and Transfer of Insurance Business.*)

by him (not being less than fifteen days from the receipt of the notice by the insurer) with any directions he may issue to remedy defects disclosed by such inspection.

(5) If, as a result of any investigation made under this section, the Superintendent of Insurance is of opinion that it is necessary in the interests of the policy-holders that the business of the insurer should be wound up, or if the insurer fails to comply with any directions issued under sub-section (4), the Superintendent may, after giving notice to the insurer and giving him an opportunity to be heard, apply to the Court to have the business of the insurer wound up.

Powers of  
investigator.

34. When any investigation is made in pursuance of section 33 the provisions of section 140 of the Indian Companies Act, 1913, shall apply for the purposes of such investigation as they apply to an investigation made in pursuance of section 138 of that Act, and all expenses of and incidental to such investigation <sup>1</sup>[including any expenses incurred before the making of an order by the Court under sub-section (2) of section 33] shall be defrayed by the insurer, <sup>2</sup>[shall have priority over other debts due from the insurer and shall be recoverable as an arrear of land-revenue.] VII of 1913.

AMALGAMATION AND TRANSFER OF INSURANCE BUSINESS.

Amalgamation  
and transfer of  
insurance  
business.

35. (1) No life insurance business of an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2 shall be transferred to <sup>3</sup>[any person or transferred to] or amalgamated with the life insurance business of any other insurer except in accordance with a scheme prepared under this section and sanctioned by the Court having jurisdiction over one or other of the <sup>4</sup>[parties concerned.]

(2) Any scheme prepared under this section shall set out the agreement under which the transfer or amalgamation is proposed to be effected, and shall

<sup>1</sup> These words, brackets and figures were inserted (with retrospective effect) by s. 21 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words were added (with retrospective effect), *ibid.*

<sup>3</sup> These words were inserted by s. 7 of the Insurance (Amendment) Act, 1940 (20 of 1940).

<sup>4</sup> These words were substituted for the words "insurers concerned", *ibid.*

(Part II —Amalgamation and Transfer of Insurance Business.)

contain such further provisions as may be necessary for giving effect to the scheme.

(3) Before an application is made to the Court to sanction any such scheme, notice of the intention to make the application together with a statement of the nature of the amalgamation or transfer, as the case may be, and of the reason therefor shall, at least two months before the application is made, be sent to the Central Government, <sup>1</sup>[and certified copies, four in number, of each of the following documents shall be furnished to the Central Government, and other such copies shall] during the two months aforesaid be kept open for the inspection of the members and policy-holders at the principal and branch offices and chief agencies of the insurers concerned, namely:—

- (a) a draft of the agreement or deed under which it is proposed to effect the amalgamation or transfer;
- <sup>2</sup>[(b) balance-sheets in respect of the insurance business of each of the insurers concerned in such amalgamation or transfer, prepared in the Form set forth in Part II of the First Schedule and in accordance with the regulations contained in Part I of that Schedule;
- (c) actuarial reports and abstracts in respect of the life insurance business of each of the insurers so concerned, prepared in conformity with the requirements of Part II of the Fourth and Fifth Schedules and in accordance with the regulations contained in Part I of the Schedule concerned;
- (d) a report on the proposed amalgamation or transfer, prepared by an independent actuary who has never been professionally connected with any of the parties concerned in the amalgamation or transfer at any time in the five years preceding the date on which he signs his report;

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<sup>1</sup> These words were substituted for the words "and certified copies of the following documents shall be furnished to the Central Government and shall" by s. 22 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These clauses were substituted for the original clauses (b) and (c) by s. 7 of the Insurance (Amendment) Act, 1940 (20 of 1940).

## (Part II.—Amalgamation and Transfer of Insurance Business)

- (e) any other reports on which the scheme of amalgamation or transfer was founded.

The balance-sheets, reports and abstracts referred to in clauses (b), (c) and (d) shall all be prepared as at the date at which the amalgamation or transfer if sanctioned by the Court is to take effect, which date shall not be more than twelve months before the date on which the application to the Court is made under this section:

Provided that if the Central Government so directs in the case of any particular insurer there may be substituted respectively for the balance-sheet, report and abstract referred to in clauses (b) and (c) prepared in accordance with this sub-section certified copies of the last balance-sheet and last report and abstract prepared in accordance with sections 11 and 13 <sup>1</sup>[of this Act or sections 7 and 8 of the Indian Life Assurance Companies Act, 1912] <sup>VI of 1912.</sup> if that balance-sheet is prepared as at a date not more than twelve months, and that report and abstract as at a date not more than five years, before the date on which the application to the Court is made under this section.]

(4) Where an application under sub-section (3) is made to the Court within three months from the commencement of this Act, the Court may, on application, extend for the insurer whose business is to be transferred to or amalgamated with the business of another insurer, the time allowed for registration <sup>2</sup>[under section 3 and for the payment of the instalments of the deposit under section 7 or section 98] for such period not exceeding nine months as the Court may think fit.

Sanction of  
amalgama-  
tion and trans-  
fer by Court.

**36.** When any application such as is referred to in sub-section (3) of section 35 is made to the Court, the Court shall cause, if for special reasons it so directs, notice of the application to be sent to every person resident in British India or in an Indian State

<sup>1</sup> These words and figures were inserted (with retrospective effect) by s. 22 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words and figures were substituted for the words and figures " and for the payment of the first instalment of the deposit under sections 3 and 7 " by s. 13 of the Insurance (Amendment) Act, 1939 (11 of 1939).

(Part II —Amalgamation and Transfer of Insurance Business.)

who is the holder of a life policy of any insurer concerned and shall cause a statement of the nature and terms of the amalgamation or transfer, as the case may be, to be published in such manner and for such period as it may direct, and, after hearing the directors and such policy-holders as apply to be heard and any other persons whom it considers entitled to be heard, may sanction the arrangement, if it is satisfied that no sufficient objection to the arrangement has been established <sup>1</sup>[and shall make such consequential orders as are necessary to give effect to the arrangement, including orders as to the disposal of any deposit made under section 7 or section 98] :

<sup>2</sup>[Provided that—

- (a) no part of the deposit made by any party to the amalgamation or transfer shall be returned except where, after effect is given to the arrangement, the whole of the deposit to be made by the insurer carrying on the amalgamated business or the person to whom the business is transferred is completed,
- (b) only so much shall be returned as is no longer required to complete the deposit last mentioned in clause (a), and
- (c) while the deposit last mentioned in clause (a) remains uncompleted, no accession, resulting from the arrangement, to the amount already deposited by the insurer carrying on the amalgamated business or the person to whom the business is transferred shall be appropriated as payment or part payment of any instalment of deposit subsequently due from him under section 7 or section 98.]

37. Where an amalgamation takes place between any two or more insurers, or <sup>3</sup>[where any business of an insurer is transferred] whether in accordance with a scheme confirmed by the Court or otherwise,

Statements  
required after  
amalgamation  
and transfer.

<sup>1</sup> These words and figures were added by s. 8 of the Insurance (Amendment) Act, 1940 (20 of 1940).

<sup>2</sup> This proviso was added by s. 23 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>3</sup> These words were substituted for the words "where any business of one insurer is transferred to another" by s. 24. *ibid.*

(Part II.—Amalgamation and Transfer of Insurance Business.)

the insurer carrying on the amalgamated business or <sup>1</sup>[the person to whom the business is transferred] as the case may be, shall, within three months from the date of the completion of the amalgamation or transfer, <sup>2</sup>[furnish in duplicate to the Central Government]—

- (a) a certified copy of the scheme, agreement or deed under which the amalgamation or transfer has been effected, and
- (b) <sup>3</sup>[a declaration signed by every party concerned] or in the case of a company by the chairman and the principal officer that to the best of their belief every payment made or to be made to any person whatsoever on account of the amalgamation or transfer is therein fully set forth and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities or other property by or with the knowledge of any parties to the amalgamation or transfer, and
- <sup>4</sup>[(c) where the amalgamation or transfer has not been made in accordance with a scheme sanctioned by the Court under section 36—
  - (i) balance-sheets in respect of the insurance business of each of the insurers concerned in such amalgamation or transfer, prepared in the Form set forth in Part II of the First Schedule and in accordance with the regulations contained in Part I of that Schedule, and
  - (ii) certified copies of any other reports on which the scheme of amalgamation or transfer was founded.]

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<sup>1</sup> These words were substituted for the words "the insurer to whom the business is transferred" by s. 24 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words were substituted for the words "furnish to the Central Government", *ibid.*

<sup>3</sup> These words were substituted for the words "a declaration signed by every insurer concerned", *ibid.*

<sup>4</sup> This clause was substituted, *ibid.*

(Part II—Assignment or Transfer of Policies and Nominations.)

# ASSIGNMENT OR TRANSFER OF POLICIES AND NOMINATIONS.

38. (1) A transfer or assignment of a policy of life insurance, whether with or without consideration, may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferor or by the assignor or his duly authorised agent and attested by at least one witness, specifically setting forth the fact of transfer or assignment.

Assignment and transfer of insurance policies.

(2) The transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but <sup>1</sup>[except where the transfer or assignment is in favour of the insurer] shall not be operative as against an insurer and shall not confer upon the transferee or assignee, or his legal representative, any right to sue for the amount of such policy or the moneys secured thereby until a notice in writing of the transfer or assignment <sup>1</sup>[<sup>2</sup>and] either the said endorsement or instrument itself or a copy thereof certified to be correct by both transferor and transferee or their duly authorised agents] <sup>3</sup>[have been delivered] to the insurer  
4\* \* \*;

<sup>5</sup>[Provided that where the insurer maintains one or more places of business in British India, such notice shall be delivered only at the place in British India mentioned in the policy for the purpose or at his principal place of business in British India.]

(3) The date on which the notice referred to in sub-section (2) is delivered to the insurer shall regulate the priority of all claims under a transfer or assignment as between persons interested in the policy; and where there is more than one instrument of transfer or assignment the priority of the claims

<sup>1</sup>These words were inserted by s. 14 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>2</sup>This word was substituted for the words "together with" by s. 25 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>3</sup>These words were substituted for the words "has been delivered", *ibid.*

<sup>4</sup>The words "at his principal place of business in British India by or on behalf of the transferor or transferee" were omitted by s. 14 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>5</sup>This proviso was added, *ibid.*

(Part II.—Assignment or Transfer of Policies and Nominations.)

under such instruments shall be governed by the order in which the notices referred to in sub-section (2) are delivered.

(4) Upon the receipt of the notice referred to in sub-section (2), the insurer shall record the fact of such transfer or assignment together with the date thereof and the name of the transferee or the assignee and shall, on the request of the person by whom the notice was given, or of the transferee or assignee, on payment of a fee not exceeding one rupee, grant a written acknowledgment of the receipt of such notice, and any such acknowledgment shall be conclusive evidence against the insurer that he has duly received the notice to which such acknowledgment relates.

(5) <sup>1</sup>[Subject to the terms and conditions of the transfer or assignment, the insurer shall, from the date of the receipt of the notice referred to in sub-section (2),] recognise the transferee or assignee named in the notice as the only person entitled to benefit under the policy, and such person shall be subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings.

<sup>2</sup>[(6) Any rights and remedies of an assignee or transferee of a policy of life insurance under an assignment or transfer effected prior to the commencement of this Act shall not be affected by the provisions of this section.]

(7) Notwithstanding any law or custom having the force of law to the contrary, an assignment in favour of a person made with the condition that it shall be inoperative or that the interest shall pass to some other person on the happening of a specified event during the <sup>3</sup>[lifetime of the person whose life is

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<sup>1</sup> These words, brackets and figure were substituted for the words, brackets and figure "From the date of the receipt of the notice referred to in sub-section (2), the insurer shall," by s. 14 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>2</sup> This sub-section was substituted, *ibid.*

<sup>3</sup> These words were substituted for the words "life of the policy-holder", *ibid.*

*(Part II.—Assignment or Transfer of Policies and Nominations.)*

insured], and an assignment in favour of the survivor or survivors of a number of persons, shall be valid.

39. (1) The holder of a policy of life insurance <sup>Nomination by policy-holder.</sup> <sup>1</sup>[on his own life, <sup>2</sup>\* \* \*] may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death.

(2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be <sup>3</sup>[but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made *bona fide* by him to a nominee mentioned in the text of the policy or registered in records of the insurer.]

<sup>4</sup>[(3) The insurer shall furnish to the policy-holder a written acknowledgment of having registered a nomination or a cancellation or change thereof, and may charge a fee not exceeding one rupee for registering such cancellation or change.]

(4) A transfer or assignment of a policy made in accordance with section 88 shall automatically cancel a nomination :

<sup>5</sup>[Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within

<sup>1</sup> These words were inserted by s. 15 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>2</sup> The words " not being an absolute assignee of the benefits under the policy," were omitted by s. 26 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>3</sup> These words were added by s. 15 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>4</sup> This sub-section was substituted, *ibid.*

<sup>5</sup> This proviso was added by s. 26 of the Insurance (Amendment) Act, 1941 (13 of 1941).



(Part II.—Assignment or Transfer of Policies and Nominations.—Commission and Rebates and Licensing of Agents.)

its surrender value, or its re-assignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy.]

(5) Where the policy matures for payment during the <sup>1</sup>[lifetime of the person whose life is insured] or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or, if there are more nominees than one, a nominee or nominees survive the <sup>2</sup>[person whose life is insured], the amount secured by the policy shall be payable to such survivor or survivors.

(7) The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Women's Property Act, 1874, applies. III of 1874.

COMMISSION AND REBATES AND LICENSING OF AGENTS.

Prohibition of payment by way of commission or otherwise for procuring business.

40. (1) No person shall, after the expiry of six months from the commencement of this Act, pay or contract to pay any remuneration or reward whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent <sup>3</sup>\* \* \* \* or a person acting on behalf of an insurer who for the purposes of insurance business employs <sup>4</sup>\* insurance agents.

(2) No insurance agent <sup>3</sup>\* \* \* \* shall be paid or contract to be paid by way of commission or as remuneration in any form an amount exceeding, in the case of life insurance business, forty per cent. of the first year's premium payable on any policy or policies effected through him and five per cent. of a

<sup>1</sup> These words were substituted for the words "lifetime of the policy-holder" by s. 15 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>2</sup> These words were substituted for the word "policy-holder", *ibid.*

<sup>3</sup> The words and figures "licensed under section 42" were omitted by s. 16, *ibid.*

<sup>4</sup> The word "licensed" was omitted, *ibid.*

(Part II.—Commission and Rebates and Licensing of Agents.)

renewal premium, or, in the case of business of any other class, fifteen per cent. of the premium :

Provided that insurers, in respect of life insurance business only, may pay, during the first ten years of their business, to their insurance agents fifty-five per cent. of the first year's premium payable on any policy or policies effected through them and six per cent. of the renewal premiums.

(3) Nothing in this section shall prevent the payment under any contract existing prior to the 27th day of January, 1937, of gratuities or renewal commission to <sup>1</sup>[any person, whether an insurance agent within the meaning of this Act or not,] or to his representatives after his decease in respect of insurance business effected through him before the said date.

41. (1) No person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to <sup>2</sup>[take out or renew or continue] an insurance in respect of any kind of risk relating to lives or property in India, any rebate of the whole or part of the commission payable or any rebate of the premium shown on the policy, nor shall any person taking out or renewing <sup>3</sup>[or continuing] a policy accept any rebate, except such rebate as may be allowed in accordance with the published prospectuses or tables of the insurer. Prohibition of rebates.

<sup>4</sup>[Provided that acceptance by an insurance agent of commission in connection with a policy of life insurance taken out by himself on his own life shall not be deemed to be acceptance of a rebate of premium within the meaning of this sub-section if at the time of such acceptance the insurance agent satisfies the prescribed conditions establishing that he is a *bona fide* insurance agent employed by the insurer ]

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<sup>1</sup> These words were substituted for the words "an insurance agent" by s. 16 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>2</sup> These words were substituted for the words "effect or renew" by s. 27 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>3</sup> These words were inserted, *ibid.*

<sup>4</sup> This proviso was added, *ibid.*

## (Part II.—Commission and Rebates and Licensing of Agents.)

(2) Any person making default in complying with the provisions of this section shall be punishable with fine which may extend to one hundred rupees, unless the default is made by a person <sup>1</sup>[taking out or renewing or continuing] a policy, in which case he shall be punishable with fine which may extend to fifty rupees only.

Licensing of  
Insurance  
Agents.

42. (1) The Superintendent of Insurance or an officer authorised by him in this behalf shall, in the prescribed manner and on payment of the prescribed fee which shall not be more than <sup>2</sup>[three rupees], issue to any individual <sup>3</sup>[making an application in the prescribed manner] and not suffering from any of the disqualifications hereinafter mentioned a licence to act as an insurance agent for the purpose of soliciting or procuring insurance business.

(2) A licence issued under this section shall entitle the holder to act as an insurance agent for any registered insurer.

(3) A licence issued under this section <sup>4</sup>[shall remain in force for a period of twelve months only from the date of issue], but shall, if the applicant does not suffer from any of the disqualifications hereinafter mentioned, be renewed from year to year on payment of <sup>5</sup>[the prescribed fee which shall not be more than three rupees, and an additional fee of a prescribed amount not exceeding one rupee by way of penalty if the application for renewal of the licence does not reach the issuing authority before the date on which the licence ceases to remain in force.]

<sup>6</sup>[Provided that when any licence is issued or renewed within the year beginning on the day on

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<sup>1</sup> These words were substituted for the words "effecting or renewing" by s. 27 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words were substituted for the words "one rupee" by s. 28, *ibid.*

<sup>3</sup> These words were substituted for the words "making an application under this section", *ibid.*

<sup>4</sup> These words were substituted for the words, figures and letters "shall expire on the 31st day of March in each year" by s. 9 of the Insurance (Amendment) Act, 1940 (20 of 1940).

<sup>5</sup> These words were substituted for the words "a fee of one rupee" by s. 28 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>6</sup> These provisos were inserted by s. 9 of the Insurance (Amendment) Act, 1940 (20 of 1940).

## (Part II.—Commission and Rebates and Licensing of Agents.)

XX of 1940. which the Insurance (Amendment) Act, 1940, came into operation, the Superintendent of Insurance may specify the date, not being earlier than one year nor later than two years from the date of issue or renewal, on which the licence shall cease to be in force.

XX of 1940. Provided further that the Central Government may, by notification in the official Gazette, make provision in respect of licences in force at the commencement of the Insurance (Amendment) Act, 1940, extending the period for which they are to remain in force by a term of from one to eleven months.]

(4) The disqualifications above referred to shall be the following:—

- (a) that the person is a minor;
- (b) that he is found to be of unsound mind by a Court of competent jurisdiction;
- (c) that he has been found guilty of criminal misappropriation or criminal breach of trust or cheating <sup>1</sup>[or forgery or an abetment of or attempt to commit any such offence] by a Court of competent jurisdiction;

<sup>2</sup>[Provided that, where at least five years have elapsed since the completion of the sentence imposed on any person in respect of any such offence, the Superintendent of Insurance shall ordinarily declare in respect of such person that his conviction shall cease to operate as a disqualification under this clause;]

- (d) that in the course of any judicial proceeding relating to any policy of insurance or the winding up of an insurance company or in the course of an investigation of the affairs of an insurer it has been found that he has been guilty of or has knowingly participated in or connived at any fraud, dishonesty or misrepresentation <sup>3</sup>[against an insurer or an insured.]

<sup>1</sup> These words were inserted by s. 28 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> This proviso was added, *ibid.*

<sup>3</sup> These words were substituted for the words "against an insurer or an assured" *ibid.*

## (Part II.—Commission and Rebates and Licensing of Agents.)

(5) If it be found that an insurance agent suffers from any of the foregoing disqualifications, without prejudice to any other penalty to which he may be liable, the Superintendent of Insurance shall, and if the agent has knowingly contravened any provision of this Act may, cancel the licence issued to the agent under this section.

<sup>1</sup>[(6) The authority which issued any licence under this section may issue a duplicate licence to replace a licence lost, destroyed or mutilated on payment of the prescribed fee which shall not be more than one rupee.]

Register of  
insurance  
agents.

43. (1) Every insurer and every person who acting on behalf of an insurer employs <sup>2\*</sup> insurance agents shall maintain a register showing the name and address of every <sup>2\*</sup> insurance agent appointed by him and the date on which his appointment began and the date, if any, on which his appointment ceased.

(2) Any individual not holding a licence issued under section 42 who acts as an insurance agent shall be punishable with fine which may extend to fifty rupees, and any insurer who, or any person acting on behalf of an insurer who, appoints as an insurance agent any individual not so licensed, or transacts any insurance business in India through any such individual, shall be punishable with fine which may extend to one hundred rupees.

(3) The provisions of sub-section (2) shall not take effect until the expiry of six months from the commencement of this Act.

Prohibition  
of cessation  
of payments of  
commission.

44. Notwithstanding anything to the contrary in a contract between any person and an insurance agent <sup>3\*</sup> \* \* forfeiting or stopping payment of renewal commission to such insurance agent, no such person shall in respect of life insurance business done in India refuse payment to an insurance agent, of commission on renewal premiums due to him under the agreement by reason only of the termination of his agreement except for fraud:

<sup>1</sup> This sub-section was added by s. 28 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> The word "licensed" was omitted by s. 29, *ibid*.

<sup>3</sup> The words "licensed under section 42" were omitted by s. 30, *ibid*.

(Part II.—Commission and Rebates and Licensing of Agents.—Special Provisions of Law.)

Provided that such agent has served such person continually and exclusively for at least ten years. and provided further that, after his ceasing to act as agent, he does not directly or indirectly solicit or procure insurance business for any other person.

#### SPECIAL PROVISIONS OF LAW.

45. No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement <sup>1</sup>[was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made] by the policy-holder and that the policy-holder knew at the time of making it that the statement was false <sup>2</sup>[or that it suppressed facts which it was material to disclose.]

Policy not to be called in question on ground of misstatement after two years.

<sup>3</sup>[Provided that nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal.]

46. The holder of a policy of insurance issued by an insurer in respect of insurance business transacted in British India after the commencement of this Act shall have the right, notwithstanding anything to the contrary contained in the policy or in any agreement relating thereto, to receive payment in British India of any sum secured thereby and to sue for any relief in respect of the policy in any Court of competent

Application of British Indian law to policies issued in British India.

<sup>1</sup> These words were substituted for the words "was on a material matter and fraudulently made" by s. 31 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words were added, *ibid.*

<sup>3</sup> This proviso was added, *ibid.*

*(Part II.—Special Provisions of Law.)*

jurisdiction in British India; and if the suit is brought in British India any question of law arising in connection with any such policy shall be determined according to the law in force in British India.

**Payment of  
money into  
Court.**

47. (1) Where in respect of any policy of life insurance maturing for payment an insurer is of opinion that by reason of conflicting claims to or insufficiency of proof of title to the amount secured thereby or for any other adequate reason it is impossible otherwise for the insurer to obtain a satisfactory discharge for the payment of such amount, <sup>1</sup>[the insurer may] before the expiry of nine months from the date of the maturing of the policy <sup>2</sup>[or, where the circumstances are such that the insurer cannot be immediately aware of such maturing, from the date on which notice of such maturing is given to the insurer,] apply to pay the amount into the Court within the jurisdiction of which is situated the place at which such amount is payable under the terms of the policy or otherwise.

(2) A receipt granted by the Court for any such payment shall be a satisfactory discharge to the insurer for the payment of such amount.

(3) An application for permission to make a payment into Court under this section shall be made by a petition verified by an affidavit signed by a principal officer of the insurer setting forth the following particulars, namely:—

- (a) the name of the insured person and his address;
- (b) if the insured person is deceased, the date and place of his death;
- (c) the nature of the policy and the amount secured by it;
- (d) the name and address of each claimant so far as is known to the insurer with details of every notice of claim received;
- (e) the reasons why in the opinion of the insurer a satisfactory discharge cannot be obtained for the payment of the amount; and

<sup>1</sup> These words were substituted for the words "the insurer shall" by s. 32 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words were inserted by s. 18 of the Insurance (Amendment) Act, 1939 (11 of 1939).

(Part II.—*Special Provisions of Law.*)

(f) the address at which the insurer may be served with notice of any proceeding relating to disposal of the amount paid into Court.

(4) An application under this section shall not be entertained by the Court if the application is made before the expiry of six months <sup>1</sup>[from the maturing of the policy by survival, or from the date of receipt of notice by the insurer of the death of the insured, as the case may be].

(5) If it appears to the Court that a satisfactory discharge for the payment of the amount cannot otherwise be obtained by the insurer it shall allow the amount to be paid into Court and shall invest the amount in Government securities pending its disposal.

(6) The insurer shall transmit to the Court every notice of claim received after the making of the application under sub-section (3), and any payment required by the Court as costs of the proceedings or otherwise in connection with the disposal of the amount paid into Court shall as to the costs of the application under sub-section (3) be borne by the insurer and as to any other costs be in the discretion of the Court.

(7) The Court shall cause notice to be given to every ascertained claimant of the fact that the amount has been paid into Court, and shall cause notice at the cost of any claimant applying to withdraw the amount to be given to every other ascertained claimant.

(8) The Court shall decide all questions relating to the disposal of claims to the amount paid into Court.

48. (1) Where the insurer is a company incorporated under the Indian Companies Act, 1913, <sup>2</sup>[or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby,] and carries on the business of life insurance, not less than one-fourth of the whole

*Directors of insurers being companies.*

VII of 1913.  
VI of 1882.  
X of 1866.

<sup>1</sup> These words were substituted for the words "from the death of the insured, or the maturing of the policy by survival" by s. 18 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>2</sup> These words and figures were inserted by s. 19, *ibid*.



*(Part II.—Special Provisions of Law.)*

number of the directors of the company <sup>1</sup>[shall notwithstanding anything to the contrary in the Articles of Association of the company be elected in the prescribed manner by the holders of policies of life insurance issued by the company.]

<sup>2</sup>[(2) Only and all persons holding otherwise than as assignees policies of life insurance issued by the company of such minimum amount and having been in force for such minimum period as may be prescribed shall be eligible for election as directors under sub-section (1), and only and all persons holding policies of life insurance issued by the company and having been in force at the time of the election for not less than six months shall be eligible to vote at such elections:

Provided that the assignment of a policy to the person who took out the policy shall not disqualify that person for being eligible for election as a director under sub-section (1).

(3) The Central Government may, for such period, or to such extent and subject to such conditions as may be specified by it in this behalf, exempt from the operation of this section—

- (a) any Mutual Insurance Company as defined in clause (a) of sub-section (1) of section 95, in respect of which the Superintendent of Insurance certifies that in his opinion owing to the conditions governing membership of the company or to the nature of the insurance contracts undertaken by it the application of the provisions of this sub-section to the company is impracticable, or
- (b) any company in respect of which the Superintendent of Insurance certifies that in his opinion the company, having taken all reasonable steps to achieve compliance with the provisions of this section, has been unable to obtain the required number of directors with the required qualifications.]

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<sup>1</sup> These words were substituted by s. 33 of the 'Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These sub-sections were inserted, *ibid.*

## (Part II.—Special Provisions of Law.)

<sup>1</sup>[<sup>2</sup>(4)] This section shall not take effect, in respect of any company in existence at the commencement of this Act, until the expiry of one year therefrom, and in respect of any company incorporated after the commencement of this Act, until the expiry of two years from the date of registration to carry on life insurance business.]

<sup>3</sup>[49. No insurer, being an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2, who carries on the business of life insurance or any other class or sub-class of insurance business to which section 18 applies shall for the purpose of declaring or paying any dividend to share-holders or any bonus to policy-holders or of making any payment in service of any debentures, utilize directly or indirectly any portion of the life insurance fund or of the fund of such other class or sub-class of insurance business, as the case may be, except a surplus shown in the valuation balance-sheet in Form I as set forth in the Fourth Schedule submitted to the Superintendent of Insurance as part of the abstract referred to in section 15 as a result of an actuarial valuation of the assets and liabilities of the insurer; nor shall he increase such surplus by contributions out of any reserve fund or otherwise unless such contributions have been brought in as revenue through the revenue account applicable to that class or sub-class of insurance business on or before the date of the valuation aforesaid, except when the reserve fund is made up solely of transfers from similar surpluses disclosed by valuations in respect of which returns have been submitted to the Superintendent of Insurance under section 15 of this Act or to the Central Government under section 11 of the Indian Life Assurance Companies Act, 1912:

VI of 1912.

Provided that payments made out of any such surplus in service of any debentures shall not exceed fifty per cent. of such surplus including any payment by way of interest on the debentures, and interest paid on the debentures shall not exceed ten per cent. of any such surplus except when the interest paid on

<sup>1</sup> This sub-section was substituted by s. 18 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>2</sup> The original sub-section (2) was re-numbered (4) by s. 33 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>3</sup> This section was substituted by s. 34, *ibid.*

*(Part II.—Special Provisions of Law.)*

the debentures is offset against the interest credited to the fund or funds concerned in deciding the interest basis adopted in the valuation disclosing the aforesaid surplus.]

Notice of options available to the assured on the lapsing of a policy.

50. An insurer shall, <sup>1</sup>[before the expiry of three months from the date on which the premiums in respect of a policy of life insurance were payable but not paid], give notice to the policy-holder informing him of the options available to him <sup>2</sup>[unless these are set forth in the policy.]

Supply of copies of proposals and medical reports.

51. Every insurer shall, on application by a policy-holder and on payment of a fee not exceeding one rupee, supply to the policy-holder certified copies of the questions put to him and his answers thereto contained in his proposal for insurance and in the medical report supplied in connection therewith.

Prohibition of business on dividing principle.

52. <sup>3</sup>[(1)] No insurer shall after the commencement of this Act begin, or after three years from that date continue to carry on, any business upon the dividing principle, that is to say, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the results of a distribution of certain sums amongst policies becoming claims within certain time-limits, or on the principle that the premiums payable by a policy-holder depend wholly or partly on the number of policies becoming claims within certain time-limits:

Provided that nothing in this section shall be deemed to prevent an insurer from allocating bonuses to holders of policies of life insurance as a result of a periodical actuarial valuation either as reversionary additions to the sums insured or as immediate cash bonuses or otherwise:

Provided further that an insurer who continues to carry on insurance business on the dividing principle after the commencement of this Act shall withhold from distribution a sum of not less than forty per cent. of the premiums received during each year

<sup>1</sup> These words were substituted for the words "within three months of the lapsing of a policy of life insurance," by s. 20 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>2</sup> These words were added by s. 35 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>3</sup> Section 52 was re-numbered as sub-section (1) of that section by s. 33, *ibid.*

(Part II.—Special Provisions of Law.—Winding up.)

after the commencement of this Act in which such business is continued so as to make up the amount required for investment under section 27.

XIII of 1941. <sup>1</sup>[(2) On the expiry of the period of three years referred to in sub-section (1), or on the insurer's ceasing before such expiry but at any time after the commencement of the Insurance (Amendment) Act, 1941, to carry on business on the dividing principle, the insurer shall forthwith cause an investigation to be made by an actuary, who shall determine the amount accumulated out of the contributions received from the holders of all policies to which the dividing principle applies and the extent of the claims of those policy-holders against the realisable assets of the insurer, and shall, before the expiration of six months from the date on which he is entrusted with the investigation, make recommendations regarding the distribution, whether by cash payments or by the allocation of paid up policies or by a combination of both methods, of such assets as he finds to appertain to such policy-holders; and the insurer shall, before the expiry of six months from the date on which the actuary makes his recommendations, distribute such assets in accordance with those recommendations.]

XIII of 1941. (3) Where at any time prior to the commencement of the Insurance (Amendment) Act, 1941, an insurer has ceased to carry on business on the dividing principle, the insurer shall, before the expiration of two months from the commencement of that Act, report to the Superintendent of Insurance the measures taken or proposed by him for the distribution among holders of policies to which the dividing principle applies of the assets due to them; and the Superintendent of Insurance may either sanction such measures or refuse his sanction, and, if he refuses his sanction or if the insurer does not report to him as required by this sub-section, the provisions of sub-section (2) shall apply to the insurer forthwith.]

#### WINDING UP.

VII of 1913. 53. (1) The Court may order the winding up in accordance with the Indian Companies Act, 1913, of <sup>Winding up by the Court.</sup>

<sup>1</sup> These sub-sections were added by s. 36 of the Insurance (Amendment) Act, 1941 (13 of 1941).

*(Part II.—Winding up.)*

any insurance company and the provisions of that Act shall, subject to the provisions of this <sup>1</sup>[Act] apply accordingly.

(2) In addition to the grounds on which such an order may be based, the Court may order the winding up of an insurance company—

- (a) if with the sanction of the Court previously obtained a petition in this behalf is presented by shareholders not less in number than one-tenth of the whole body of shareholders and holding not less than one-tenth of the whole share capital or by not less than fifty policy-holders holding policies of life insurance that have been in force for not less than three years and are of the total value of not less than fifty thousand rupees; or
- (b) if the Superintendent of Insurance, who is hereby authorised to do so, applies in this behalf to the Court on any of the following grounds, namely:—
  - (i) that the company has failed to deposit or to keep deposited with the Reserve Bank of India the amounts required by section 7 <sup>2</sup>[or section 98],
  - (ii) that the company having failed to comply with any requirement of this Act has continued such failure <sup>3</sup>[or having contravened any provision of this Act has continued such contravention] for a period of three months after notice of such failure <sup>3</sup>[or contravention] has been conveyed to the company by the Superintendent of Insurance,
  - (iii) that it appears from the returns furnished under the provisions of this Act or from the results of any investigation made thereunder that the company is insolvent, or

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<sup>1</sup> This word was substituted for the word "Chapter" by s. 37 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words and figures were inserted by s. 21 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>3</sup> These words were inserted by s. 37 of the Insurance (Amendment) Act, 1941 (13 of 1941).

## (Part II.—Winding up.)

- (iv) that the continuance of the company is prejudicial to the interests of the policy-holders.

VII of 1913. 54. Notwithstanding anything contained in the Indian Companies Act, 1913, an insurance company shall not be wound up voluntarily except for the purpose of effecting an amalgamation or a re-construction of the company, or on the ground that by reason of its liabilities it cannot continue its business. Voluntary winding up

55. (1) In the winding up of an insurance company or in the insolvency of any other insurer the value of the assets and the liabilities of the insurer shall be ascertained in such manner and upon such basis as the liquidator or receiver in insolvency thinks fit, subject, so far as applicable, to the rule contained in the Sixth Schedule and to any directions which may be given by the Court. Valuation of liabilities.

(2) For the purposes of any reduction by the Court of the amount of the contracts of any insurance company the value of the assets and liabilities of the company and all claims in respect of policies issued by it shall be ascertained in such manner and upon such basis as the Court thinks proper having regard to the rule aforesaid.

VII of 1913. (3) The rule in the Sixth Schedule shall be of the same force and may be repealed, altered or amended as if it were a rule made in pursuance of section 246 of the Indian Companies Act, 1913, and rules may be made under that section for the purpose of carrying into effect the provisions of this Act with respect to the winding up of insurance companies.

56. (1) In the winding up of an insurance company and in the insolvency of any other insurer the value of the assets and the liabilities of the insurer in respect of life insurance business shall be ascertained separately from the value of any other assets or any other liabilities of the insurer and no such assets shall be applied to the discharge of any liabilities other than those in respect of life insurance business except in so far as those assets exceed the liabilities in respect of life insurance business. Application of surplus assets of life insurance fund in liquidation or insolvency.

## (Part II.—Winding up.)

(2) In the winding up of an insurance company carrying on the business of life insurance or in the insolvency of any other insurer carrying on such business where any proportion of the profits of the insurer was before the commencement of the winding up or insolvency allocated to policy-holders, if, when the assets and liabilities of the insurer have been ascertained, there is found to be a surplus of assets over liabilities (hereinafter referred to as a *prima facie* surplus) there shall be added to the liabilities of the insurer in respect of the life insurance business an amount equal to such proportion of the *prima facie* surplus as is equivalent to such proportion of the profits allocated to shareholders and policy-holders as was allocated to policy-holders during the ten years immediately preceding the commencement of the winding up and the assets of the insurer shall be deemed to exceed his liabilities only in so far as those assets exceed those liabilities after such addition:

Provided that—

- (a) if in any case there has been no such allocation or if it appears to the Court that by reason of special circumstances it would be inequitable that the amount to be added to the liabilities of the insurer in respect of the life insurance business should be an amount equal to such proportion as aforesaid, the amount to be so added shall be such amount as the Court may direct, and
- (b) for the purpose of the application of this subsection to any case where before the commencement of the winding up or insolvency a proportion of such profits as aforesaid of a branch only of the life insurance business in question has been allocated to policy-holders, the value of the assets and liabilities of the insurer in respect of that branch shall be separately ascertained in like manner as the value of his assets and liabilities in respect of the life insurance business was ascertained, and the surplus so found, if any, of assets over liabilities shall, for the purpose of

*(Part II.—Winding up.)*

determining the amount to be added to the liabilities of the insurer in respect of the life insurance business be deemed to be the *prima facie* surplus.

57. (1) Where the insurance business or any part of the insurance business of an insurance company has been transferred to another insurance company under an arrangement in pursuance of which the first mentioned company (in this section referred to as the secondary company) or the creditors thereof has or have claims against the company to which such transfer was made (in this section referred to as the principal company) then, if the principal company is being wound up by or under the supervision of the Court, the Court shall (subject as hereinafter mentioned) order the secondary company to be wound up in conjunction with the principal company and may by the same or any subsequent order appoint the same person to be liquidator for the two companies and make provision for such other matters as may seem to the Court necessary with a view to the companies being wound up as if they were one company.

*winding up  
secondary  
companies.*

(2) The commencement of the winding up of the principal company shall, save as otherwise ordered by the Court, be the commencement of the winding up of the secondary company.

(3) In adjusting the rights and liabilities of the members of the several companies among themselves the Court shall have regard to the constitution of the companies and to the arrangements entered into between the companies in the same manner as the Court has regard to the rights and liabilities of different classes of contributories in the case of the winding up of a single company or as near thereto as circumstances admit.

(4) Where any company alleged to be secondary is not in process of being wound up at the same time as the principal company to which it is alleged to be secondary, the Court shall not direct the secondary company to be wound up, unless, after hearing all objections (if any) that may be urged by or on behalf of the company against its being wound up, the Court



*(Part II — Winding up.)*

is of opinion that the company is secondary to the principal company and that the winding up of the company in conjunction with the principal company is just and equitable.

(5) An application may be made in relation to the winding up of any secondary company in conjunction with the principal company by any creditor of, or person interested in, the principal or secondary company.

(6) Where a company stands in the relation of a principal company to one insurance company and in the relation of a secondary company to some other insurance company or where there are several insurance companies standing in the relation of secondary companies to one principal company, the Court may deal with any number of such companies together or in separate groups as it thinks most expedient upon the principles laid down in this section.

**Schemes for  
partial  
winding up of  
insurance  
companies.**

58. (1) If at any time it appears expedient that the affairs of an insurance company in respect of any class of business comprised in the undertaking of the company should be wound up but that any other class of business comprised in the undertaking should continue to be carried on by the company or be transferred to another insurer, a scheme for such purposes may be prepared and submitted for confirmation of the Court in accordance with the provisions of this Act.

(2) Any scheme prepared under this section shall provide for the allocation and distribution of the assets and liabilities of the company between any classes of business affected (including the allocation of any surplus assets which may arise on the proposed winding up), for any future rights of every class of policyholders in respect of their policies and for the manner of winding up any of the affairs of the company which are proposed to be wound up and may contain provisions for altering the memorandum of the company with respect to its objects and such further provisions as may be expedient for giving effect to the scheme.

(3) The provisions of this Act relating to the valuation of liabilities of insurers in liquidation and insolvency and to the application of surplus assets

*(Part II.—Winding up.)*

VII of 1913

of the life insurance fund in liquidation or insolvency shall apply to the winding up of any part of the affairs of a company in accordance with the scheme under this section in like manner as they apply in the winding up of an insurance company, and any scheme under this section may apply with the necessary modifications any of the provisions of the Indian Companies Act, 1913, relating to the winding up of companies.

VII of 1913.

(4) An order of the Court confirming a scheme under this section whereby the memorandum of a company is altered with respect to its object shall as respects the alteration have effect as if it were an order confirmed under section 12 of the Indian Companies Act, 1913, and the provisions of sections 15 and 16 of that Act shall apply accordingly.

59. In the winding up of an insurance company and in the insolvency of any other insurer the liquidator or assignee as the case may be shall apply to the Court for an order for the return of the <sup>1</sup>[deposit made by the company or the insurer, as the case may be, under section 7 or section 98] and the Court shall on such application order a return of the deposit subject to such terms and conditions as it shall direct.

Return of  
deposit.

60. In the winding up of an insurance company for the purposes of a cash distribution of the assets and in the insolvency of any other insurer the liquidator or assignee as the case may be in the case of all persons appearing by the books of the company or other insurer to be entitled to or interested in the policies granted by the company or other insurer shall ascertain the value of the liability of the company or other insurer to each such person and shall give notice of such value to those persons in such manner as the Court may direct and any person to whom notice is so given shall be bound by the value so ascertained unless he gives notice of his intention to dispute such value in such manner and within such time as may be specified by a rule or order of the Court.

Notice of  
policy values

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<sup>1</sup> These words and figures were substituted for the words and figures "deposit made by the company under section 7" by s. 22 of the Insurance (Amendment) Act, 1939 (11 of 1939).

(Part II.—Winding up.—Special provisions relating to External Companies.)

Power of Court to reduce contracts of insurance.

61. (1) Where an insurance company is in liquidation or any other insurer is insolvent the Court may make an order reducing the amount of the insurance contracts of the company or other insurer upon such terms and subject to such conditions as the Court thinks just.

(2) Where a company carrying on the business of life insurance has been proved to be insolvent, the Court may if it thinks fit in place of making a winding up order reduce the amount of the insurance contracts of the company upon such terms and subject to such conditions as the Court thinks fit.

(3) Application for an order under this section may be made either by the liquidator or by or on behalf of the company or by a policy-holder, or by the Superintendent of Insurance and the Superintendent of Insurance and any person whom the Court thinks likely to be affected shall be entitled to be heard on any such application.

SPECIAL PROVISIONS RELATING TO EXTERNAL COMPANIES

Power of Central Government to impose reciprocal disabilities on non-Indian companies.

62. Where, by the law or practice of any country outside India in which an insurer carrying on insurance business in British India is constituted, incorporated or domiciled, insurance companies incorporated in British India are required as a condition of carrying on insurance business in that country to comply with any special requirements whether as to the keeping of deposits of assets in that country or otherwise which is not imposed upon insurers of that country under this Act. the Central Government shall, if satisfied of the existence of such special requirement, by notification in the official Gazette, direct that the same requirement, or requirements as similar thereto as may be, shall be imposed upon insurers of that country as a condition of carrying on the business of insurance in British India.

Particulars to be filed by insurers established outside British India.

63. Every insurer, having his principal place of business or domicile outside British India, who establishes a place of business within British India, or appoints a representative in British India with the object of obtaining insurance business, shall within

*(Part II.—Special Provisions relating to External Companies.)*

three months from the establishment of such place of business or the appointment of such <sup>1</sup>[representative], file with the Superintendent of Insurance—

- (a) a certified copy of the charter, statutes, deed of settlement or memorandum and articles or other instrument constituting or defining the constitution of the insurer, and, if the instrument is not written in the English language, a certified translation thereof,
- (b) a list of the directors, if the insurer is a company,
- (c) the name and address of some one or more persons resident in British India authorised to accept on behalf of the insurer service of process and any notice required to be served on the insurer, together with a copy of the power of attorney granted to him,
- (d) the full address of the principal office of the insurer in British India,
- (e) a statement of the classes of insurance business to be carried on by the insurer, and
- (f) a statement verified by an affidavit setting forth the special requirements, if any, of the nature specified in section 62 imposed in the country of origin of the insurer on Indian nationals,

and, in the event of any alteration being made in the address of the principal office or in the classes of business to be carried on, or in any instrument here referred to, or in the name of any of the persons here referred to, or in the matters specified in clause (f) above, the company shall forthwith furnish to the Superintendent of Insurance particulars of such alteration.

64. Every insurer having his principal place of business or domicile outside British India shall keep at his principal office in British India such books of account, registers and documents as will enable the-

Books to be kept by insurers established outside British India.

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This word was substituted for the word "agent" by s. 23 of the Insurance (Amendment) Act, 1939 (11 of 1939).

(Part II.—*Special Provisions relating to External Companies.*—Part III.—*Provident Societies.*)

accounts, statements and abstracts which he is required under this Act to furnish to the Superintendent of Insurance in respect of the insurance business transacted by him, in India to be compiled and, if necessary, checked by the Superintendent of Insurance.

### PART III.

#### PROVIDENT SOCIETIES.

Definition of  
"provident  
society".

<sup>1</sup>[65. (1) In this Part "provident society" means, a person who, or a body of persons (whether corporate or unincorporate) which, not being an insurer registered for the time being under Part II of this Act, carries on the business of insuring the payment, on the happening of any of the contingencies mentioned in sub-section (2), of—

- (a) an annuity of or equivalent to fifty rupees or less, payable for an uncertain period, or
- (b) a gross sum of five hundred rupees or less, whether paid or payable in a lump sum or in two or more instalments over a certain period,

exclusively in both cases (a) and (b) of any profit or bonus not being a guaranteed profit or bonus.

*Explanation.*—For the purposes of this sub-section, a period is "certain" if its duration is ascertainable in advance and "uncertain" if its duration is not so ascertainable.

(2) The contingencies referred to in sub-section (1) are the following, namely:—

- (a) the birth, marriage or death of any person or the survival by a person of a stated or implied age or contingency;
- (b) failure of issue;

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This section was substituted (with retrospective effect) by s. 10 of the Insurance (Amendment) Act, 1940 (20 of 1940.)

## (Part III.—Provident Societies.)

- (c) the occurrence of a social, religious or other ceremonial occasion;
- (d) loss of or retirement from employment;
- (e) disablement in consequence of sickness or accident;
- (f) the necessity of providing for the education of a dependent;
- (g) any other contingency which may be prescribed or which may be authorised by the Provincial Government with the approval of the Central Government.

(3) For the purposes of sub-sections (1) and (2)—

- (a) contracts entered into before the commencement of this Act shall not be taken into account;
- (b) two or more policies issued to one person shall, for the purposes of determining whether the limits fixed by sub-section (1) have or have not been exceeded, be deemed to be one policy if the contingencies on the happening of which the sums are payable under the policies (whether the contingencies be the same or different) relate to one person only, whether he be the policy-holder or some other person.

(4) Every person or body of persons for the time being registered as a provident society under the Provident Insurance Societies Act, 1912, and every person or body of persons for the time being registered as a provident society under this Act shall be deemed to be a provident society for all the purposes of this Act.

1912.

(5) If any question arises whether any person or body of persons is or is not a provident society within the meaning of this section, the Superintendent of Insurance shall decide the question and his decision shall be final.]

<sup>1</sup>[66. No provident society shall undertake any form of insurance not falling within the limits fixed

Restrictions on provident societies.

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<sup>1</sup> This section was substituted (with retrospective effect) by 10 of the Insurance (Amendment) Act, 1940 (20 of 1940).

*(Part III.—Provident Societies.)*

by sub-section (1) of section 65, nor shall any provident society be eligible to be registered under section 3.]

Name.

67. No provident society established after the commencement of this Act shall adopt as its name, and no provident society established before the commencement of this Act shall continue after the expiry of six months from the commencement thereof to use as its name, any combination of words which fails to include the word "provident" or which includes the word "life".

Insurable  
interest.

68. No provident society shall receive any premium or contribution for insuring money to be paid to any person other than the person paying such premium or contribution or the wife, husband, child, grand-child, parent, brother or sister, nephew or niece of such a person.

Dividing  
business.

69. (1) No provident society shall carry on any business upon the dividing principle, that is to say, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on <sup>1</sup>[the results of a distribution of certain sums amongst policies becoming claims within certain time-limits, or on the principle that the premiums payable by a policy-holder depend wholly or partly on the number of policies becoming claims within certain time-limits.].

(2) The Superintendent of Insurance shall, as soon as possible, take steps to have any provident society which carries on business on the dividing principle wound up:

Provided that, where any such provident society in existence at the commencement of this Act applies within three months of such commencement to the Superintendent of Insurance for permission to continue carrying on its business with a view meanwhile to reorganise its business in accordance with the provisions of this Act, the Superintendent of Insurance may at his discretion, with due regard to the past

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<sup>1</sup> These words were substituted for the words "the results of a distribution, amongst policies maturing for payment within certain time-limits, of certain sums" by s. 38 of the Insurance (Amendment) Act, 1941 (13 of 1941).

## (Part III.—Provident Societies.)

history of the society, permit the society to continue business for a period not exceeding two years from the date of receipt of such permission, so however that no new business on the dividing principle is undertaken by the society.

**XIII of 1941.** <sup>1</sup>[(3) Where after the commencement of the Insurance (Amendment) Act, 1941, a provident society is to be wound up in pursuance of this section, or where, whether before or after the commencement of that Act, a provident society ceases to carry on business on the dividing principle, the provisions of sub-section (2) and sub-section (3) of section 52 shall, so far as may be, apply in like manner as they apply to an insurer ceasing to carry on business on the dividing principle.]

**V of 1912.** **70.** (1) No provident society except a provident <sup>Registration.</sup> society registered under the provisions of the Provident Insurance Societies Act, 1912, shall receive any premium or contribution until it has obtained from the Superintendent of Insurance a certificate of registration.

(2) Every application for registration shall be accompanied by—

- VII of 1913.**  
**VI of 1882.**  
**X of 1866.**
- (a) a certified copy of the rules of the society, and when the society is a company incorporated under the Indian Companies Act, 1913, <sup>2</sup>[or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby,] a certified copy of the Memorandum and Articles of Association or where the society is not such a company a certified copy of the deed of constitution of the society;
  - (b) the names and addresses of the proprietors or directors, and the managers of the society <sup>3</sup>[the full address of the registered office of the society, the full address of the principal office of the society in British

<sup>1</sup> This sub-section was added by s. 38 of the Insurance (Amendment) Act, 1941 (13 of 1941)

<sup>2</sup> These words and figures were inserted by s. 39, *ibid.*

<sup>3</sup> These words were added, *ibid.*



## (Part III.—Provident Societies.)

India, the name of the manager at such office, and the name and address of some one or more persons resident in British India authorised to accept any notice required to be served on the society];

- (c) a certificate from the Reserve Bank of India that the initial deposit referred to in section 73 has been made; <sup>1</sup>\* \*;
- (d) a declaration verified by an affidavit that the minimum working capital required by section 72, is available; <sup>2</sup>[and
- (e) the prescribed fee for registration being not more than two hundred rupees.]

(3) The Superintendent of Insurance may refuse to issue a certificate of registration until he is satisfied that the rules of the society comply with the provisions of this Act and that the minimum working capital required by section 72 is available, but if he is so satisfied he shall register the society and its rules.

(4) The Superintendent of Insurance may, after giving previous notice in writing in such manner as he thinks fit specifying the grounds for the proposed cancellation, and allowing the society concerned an opportunity of being heard, apply to the Court and obtain sanction for cancellation of the registration made under this section or made under the provisions of the Provident Insurance Societies Act, v t 1912. 1912,—

- (a) if he is satisfied as the result of an inquiry made under section 87—
  - (i) that the society is insolvent or is likely to become so, or
  - (ii) that the business of the society is conducted fraudulently or not in accordance with the rules thereof, or that it is in the interests of the policy-holders that the society should cease to carry on business,

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<sup>1</sup> The word "and" was omitted by s. 39 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> The word "and" and clause (e) were added, *ibid.*

*(Part III.—Provident Societies.)*

- (b) if the initial deposit or any of the further deposits required by section 73 has not been made, or
- (c) if the society, having failed to comply with any requirement <sup>1</sup>[or having contravened any provision] of this Act, has continued such failure <sup>1</sup>[or contravention], for a period of one month after notice of such failure <sup>1</sup>[or contravention] has been conveyed to the society by the Superintendent of Insurance:

Provided that the Superintendent of Insurance may, if he thinks fit, instead of applying for cancellation of the registration under sub-clause (i) of clause (a) of this sub-section make a recommendation to the Court that the contracts of the society should be reduced in such manner and subject to such conditions as he may indicate.

<sup>2</sup>[Provided further that the Superintendent of Insurance may, without previous notice and without application to the Court for sanction,—

- (a) cancel the registration of a provident society which has failed to have its registration renewed, or
- (b) cancel, on such terms and conditions as he thinks fit, the registration of any provident society which applies to him for such cancellation if he is satisfied that the society has ceased to carry on insurance business and that all its liabilities in respect of insurance policies are either satisfied or otherwise provided for.]

<sup>3</sup>[(5)When a registration is cancelled the provident society shall not, after the cancellation has taken effect, enter into any new contracts of insurance, but all rights and liabilities in respect of contracts of insurance entered into by it before such cancellation takes effect shall, subject to the provisions of section 88, continue as if the cancellation had not taken place.

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<sup>1</sup> These words were inserted by s. 39 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> This proviso was added, *ibid.*

<sup>3</sup> These sub-sections were added, *ibid.*

*(Part III.—Provident Societies.)*

(6) Where a registration is cancelled under clause (b) of sub-section (4), or because the society has failed to have its registration renewed, the Superintendent of Insurance may at his discretion revive the registration if the provident society, within six months from the date on which the cancellation took effect, makes the deposits required by section 73 or has had an application under sub-section (3) of section 70A accepted, as the case may be, and complies with any directions which may be given to it by the Superintendent of Insurance.]

**Renewal of registration.**

<sup>1</sup>[70A. (1) Every provident society registered under this Act, or under the Provident Insurance Societies Act, 1912, shall have its registration renewed annually for each period of twelve months after that ending on the 30th day of June, 1942. V of 1912.]

(2) An application for the renewal of a registration shall be made by the society to the Superintendent of Insurance before the 30th day of June preceding the period for which renewal is sought, and shall be accompanied as provided in sub-section (3) by evidence of payment of the prescribed fee which shall not exceed two hundred rupees but may vary according to the volume of insurance business done by the society.

(3) The prescribed fee for the renewal of a registration for any year shall be paid into the Reserve Bank of India, or, where there is no office of that Bank, into the Imperial Bank of India acting as the agent of that Bank, or into any Government treasury, and the receipt shall be sent along with the application for renewal of the registration.

(4) If a provident society fails to apply for renewal of registration before the date specified in sub-section (2) the Superintendent of Insurance may, so long as he has taken no action under section 88 to have the society wound up, accept an application for renewal of registration on receipt from the society of the fee payable with the application and such penalty, not exceeding the prescribed fee payable by the society, as he may require.

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<sup>1</sup> These sections were inserted by s. 40 of the Insurance (Amendment) Act, 1941 (13 of 1941).

## (Part III.—Provident Societies.)

(5) The Superintendent of Insurance shall, on being satisfied that the society has fulfilled the requirements of this section, renew the registration and grant it a certificate of renewal of registration.

**70B. (1)** Every provident society registered under section 70 before the commencement of the Insurance (Amendment) Act, 1941, shall, before the expiration of three months from the commencement of the Insurance (Amendment) Act, 1941, furnish to the Superintendent of Insurance such particulars in addition to those already supplied for the purpose of obtaining registration as are required by sub-section (2) of section 70 of this Act as amended by the Insurance (Amendment) Act, 1941.

XIII of 1941. *Supplementary information and reports of alterations in particulars furnished with application for registration.*

XIII of 1941.

(2) Every provident society registered under the provisions of the Provident Insurance Societies Act, 1912, shall, before the expiration of three months from the commencement of the Insurance (Amendment) Act, 1941, furnish to the Superintendent of Insurance so far as it has not already done so the documents and information required by clauses (a) and (b) of sub-section (2) of section 70 to accompany an application by a provident society for registration under that section.

V of 1912.

XIII of 1941.

(3) When any alteration occurs or is made which affects any of the matters which are required under the provisions of sub-section (2) of section 70 to accompany an application by a provident society for registration under that section, or are to be furnished to the Superintendent of Insurance under this section, the provident society shall furnish forthwith to the Superintendent of Insurance full particulars duly authenticated of such alteration.]

71. The provisions of section 32 shall apply to provident societies as they apply to insurers.

*Prohibition of managing agents.*

72. No provident society 1\* \* \* \* shall be registered unless it has a paid up capital sufficient to provide as working capital a net sum of not less than five thousand rupees exclusive of deposits made under this Act and exclusive in the case of a company

*Working capital.*

<sup>1</sup> The words "established after the commencement of this Act" were omitted by s. 41 of the Insurance (Amendment) Act, 1941 (13 of 1941).

## (Part III.—Provident Societies.)

of any expenses incurred in connection with the formation of the company.

## Deposites

73. (1) Every provident society shall, if established before the commencement of this Act within one year from such commencement, or, if established after the commencement of this Act before the society applies for registration under section 70, deposit and keep deposited with the Reserve Bank of India in one of the offices in India of the Bank, for and on behalf of the Central Government, cash or approved securities amounting at the market value of the securities on the date of deposit to five thousand rupees, and shall thereafter <sup>1</sup>[make in each calendar year] a further deposit amounting to not less than one-fifth of the gross premium <sup>2</sup>[income for the preceding calendar year] (including admission fees and other fees received by the society) until the total amount so deposited and kept is fifty thousand rupees.

(2) The provisions of sub-sections (8), (9), <sup>3</sup>[(9A), (9B)] and (10) of section 7 and of sub-section (1) of section 8 <sup>4</sup>[and of section 9] shall apply to the deposits made under this section as they apply to deposits made by an insurer.

## Rules.

74. (1) Every provident society <sup>5</sup>\* \* \* \* shall in its rules set forth—

- (a) the name, the object and the location of the registered office of the society;
- (b) the contingencies or classes of contingency on the happening of which money is to be paid;

<sup>1</sup> These words were substituted for the words "make each year" by s. 25 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>2</sup> These words were substituted for the words "income for the year", *ibid.*

<sup>3</sup> These brackets, figures and letters were inserted by s. of the Insurance (Amendment) Act, 1940 (20 of 1940).

<sup>4</sup> These words and figure were inserted, *ibid.*

<sup>5</sup> The words "established after the commencement of this Act" were omitted by s. 42 of the Insurance (Amendment) Act, (13 of 1941).

*(Part III.—Provident Societies.)*

- (c) the conditions to be complied with before, and the payments to be made on, admission to the society;
- (d) the rates of premium or contribution, and the periods for which or the times at which premiums or contributions are payable.
- (e) the maximum amount payable to a subscriber or policy-holder;
- (f) the nature and amounts of the benefits provided for by the society;
- (g) the circumstances in which a bonus may be paid to a policy-holder;
- (h) the nature of the evidence required for the proof of the happening of any contingency on which money is to be paid;
- (i) the circumstances in which policies may be forfeited or renewed or the whole or a part of the premiums paid on a policy may be returned, or a surrender value of a policy may be granted;
- (j) the penalties for delay in paying or failure to pay premiums or contributions;
- (k) the proportion of the annual income of the society which may be disbursed on and the provisions to be made for meeting the expenses of the management of the society;
- (l) the person or persons who or the authority which shall have power to invest the funds of the society;
- (m) the provisions for appointment of auditors and their remuneration;
- (n) the procedure to be adopted in altering the rules of the society;
- (o) unless these are provided for in the articles of association of a society which is a company incorporated under the Indian Companies Act, 1913, <sup>1</sup>[or under the Indian Companies Act, 1882, or under the Indian

VII of 1913.  
VI of 1882.

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<sup>1</sup> These words and figures were inserted by s. 42 of the Insurance (Amendment) Act, 1941 (13 of 1941).

## (Part III.—Provident Societies.)

Companies Act, 1866, or under any Act not 1866, repealed thereby,]—

- (i) the mode of appointment and removal, the qualification and the powers of a director, manager, secretary or other officer of the society;
- (ii) the manner of raising additional capital; and
- (iii) the provisions for the holding of general meetings of the members and policy-holders and for the powers to be exercised and the procedure to be followed thereat; and

(p) such other matters as may be prescribed.

(2) Where the rules of any provident society registered under the Provident Insurance Societies Act, 1912, fail to comply with the provisions of this section v of 1912. the society shall, before the expiry of twelve months from the commencement of this Act, amend the rules so as to comply with these provisions.

**Amendment of rules.**

**75.** (1) No amendment of any rule of a provident society shall be valid until it has been sent to the Superintendent of Insurance and has been registered by him.

(2) The Superintendent of Insurance on being satisfied that the proposed amendment is not contrary to the provisions of this Act shall, unless he is of opinion that the amendment unfairly affects the rights of existing members or policy-holders of the society, issue to the society an acknowledgment of the registration of the amended rule.

**Supply of copy of rules.**

**76.** Every provident society shall on demand deliver free of cost to any member of the society a copy of the rules of the society and to any person other than a member a copy of such rules on the payment of a sum not exceeding one rupee.

**Registered office.**

**77.** Every provident society <sup>1</sup>[shall have in British India a principal office] (on the outside of which it shall keep displayed its name in a conspicuous position in legible characters) to which all

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<sup>1</sup> These words were substituted for the words "shall have an office" by s. 43 of the Insurance (Amendment) Act, 1941 (13 of 1941).

## (Part III.—Provident Societies.)

communications and notices may be addressed, and shall give notice to the Superintendent of Insurance of any change in the location thereof within twenty-eight days of its occurrence.

78. Where any notice, advertisement or other official publication of a provident society contains a statement of the amount of the authorised capital of the society, the publication shall also contain a statement of the amount of the capital which has been subscribed and the amount paid up.

79. Every provident society <sup>1</sup>[shall keep at its principal office in British India]— <sup>Registers and books.</sup>

<sup>2</sup>[(a) such registers in such form as may be prescribed;]

<sup>3</sup>[(b)] a cash book in which shall be entered separately for each class of contingency separately specified in section 65 all sums received and expended by the society and the matters in respect of which the receipt or expenditure takes place;

<sup>3</sup>[(c)] a ledger.

<sup>3</sup>[(d)] a journal.

80. (1) Every provident society shall at the expiry of the calendar year prepare a revenue account and balance-sheet in the prescribed form verified in the prescribed manner, together with a report on the general state of the society's affairs and shall cause the revenue account and balance-sheet to be audited by an auditor, and the auditor shall so far as may be in the audit of a provident society have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities imposed on, an auditor of companies by section 145 of the Indian Companies Act, 1913.

Revenue account, balance-sheet and annual statements.

VII of 1913.

<sup>1</sup> These words were substituted for the words "shall keep at its registered office" by s. 44 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> This clause was substituted for the original clauses (a) to (d), *ibid.*

<sup>3</sup> The original clauses (e), (f) and (g) were re-lettered, respectively, as clauses (b), (c) and (d), *ibid.*



*(Part III.—Provident Societies.)*

(2) Every provident society shall at the expiry of the calendar year prepare with respect to that year—

(a) a statement showing separately for each class of contingency separately specified in section 65—

(i) the number of new policies effected, the total amount insured thereby and the total premium income received in respect thereof and the number of existing policies discontinued during the year with the total amount insured thereby, and

(ii) the total amount of claims made and the total amount paid in satisfaction thereof:

(b) a statement showing details of every insurance effected on a life other than the life of the person insuring; and

(c) a statement showing the total amount paid as allowances to agents and canvassers.

(3) Until the expiry of two years from the commencement of this Act this section <sup>1</sup>[and section 73] shall apply to provident societies registered before the commencement of this Act under the Provident Insurance Societies Act, 1912, as if the reference to <sup>2</sup>of 1912 the calendar year were a reference to either the financial year or the calendar year.

Actuarial  
report and  
abstract.

81. (1) Every provident society shall once in every five years or at such shorter intervals as may be laid down by the rules of the society cause an investigation to be made into its financial condition including the valuation of its liabilities and assets by an actuary.

(2) The report of the actuary shall contain an abstract in which shall be stated—

(a) the general principles adopted in the valuation, including the method by which the valuation age of lives was ascertained,

(b) the rate at each age of the mortality and any other factor assumed and the annuity values used in valuation,

<sup>1</sup> These words and figures were inserted by s. 26 of the Insurance (Amendment) Act, 1939 (11 of 1939).

## (Part III.—Provident Societies.)

- (c) the reserve values held against policies effected,
- (d) the rate of interest assumed, and
- (e) the provision made for expenses,

and shall have appended to it a certificate signed by a principal officer of the society that all material necessary for proper valuation has been placed at the disposal of the actuary and that full and accurate particulars of every policy under which there is a liability either actual or contingent have been furnished to the actuary for the purpose of the investigation.

(3) If the actuary finds that the financial condition of the society is such that no surplus exists for distribution as bonus to the policy-holders or as dividend to the shareholders, he shall state in his report whether in his opinion the society is insolvent and, if so, whether it should be wound up or not, and the extent to which in his opinion existing contracts should be modified or existing rates of premium should be adjusted to make good the deficiency in the assets.

82. (1) The revenue account and balance-sheet with the auditor's report thereon and the report on the general state of the society's affairs referred to in sub-section (1) of section 80, <sup>1</sup>[shall be printed and four copies of these and of the statements referred to], in sub-section (2) of section 80, shall be furnished as returns to the Superintendent of Insurance <sup>2</sup>[within six months] from the end of the period to which they relate and copies of the revenue account and balance-sheet and the auditor's report thereon and of the report on the general state of the society's affairs shall, on the application of any member or policy-holder made within two years from the date on which the document was so furnished, be sent to him within fourteen days from the receipt of the application on payment of a fee of one rupee.

Submission of  
returns to  
Superinten-  
dent of  
Insurance.

<sup>1</sup> These words were substituted for the words "and the statements referred to" by s. 45 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words were substituted for the words "within three months", *ibid.*

## (Part III.—Provident Societies.)

(2) All the material necessary for the proper valuation of the liabilities of the society under the provisions of section 81 shall be placed at the disposal of the actuary within three months from the end of the period to which such material relates, and the report and abstract referred to in section 81 shall be furnished as a return to the Superintendent of Insurance within a further period of three months

(3) <sup>1</sup>[The provisions of sub-section (2) of section 15 relating to the copies therein referred to shall apply to the returns referred to in sub-section (1) of this sub-section, and] the provisions of section 17 shall apply to the accounts and balance-sheet of a provident society being a company incorporated under the Indian Companies Act, 1913, <sup>2</sup>[or under VII of 1913. the Indian Companies Act, 1882, or under the Indian VI of 1882. Companies Act, 1866, or under any Act repealed X of 1866. thereby,] as they apply to the accounts and balance-sheet of an insurer, <sup>3</sup>[and the Superintendent of Insurance may exercise, in respect of returns made by a provident society and in respect of an investigation or valuation to which section 81 refers, the same powers as are exercisable by him under section 21 and section 22, respectively, in the case of an insurer].

Actuarial  
examination  
of schemes.

83. (1) Every provident society, <sup>4</sup>[registered] after the commencement of this Act, shall cause every scheme of insurance which it proposes to put into operation, and every provident society registered before the commencement of this Act under the provisions of the Provident Insurance Societies Act, 1912 <sup>5</sup>[shall cause any scheme which it proposes to put into operation for the first time], after such

<sup>1</sup> These words, brackets and figures were inserted by s. 45 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words and figures were inserted by s. 27 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>3</sup> These words and figures were added by s. 45 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>4</sup> This word was substituted for the word "established" by s. 46, *ibid.*

<sup>5</sup> These words were substituted for the words "shall cause any new scheme which it proposes to put into operation," *ibid.*

*(Part III.—Provident Societies.)*

commencement to be examined by an actuary, and shall not receive any premium or contribution in connection with the scheme until the actuary has certified <sup>1</sup>[that the rates, advantages, terms and conditions of the scheme are workable and sound]. and such certificate has been forwarded to the Superintendent of Insurance.

(2) The provisions of sub-section (1) shall apply to any alteration of a scheme already in operation but the Superintendent of Insurance may, if he is of opinion that the alteration unfairly affects the interests of existing policy-holders, prohibit the alteration, and, if he does so, the society shall not put the altered scheme into operation, unless it first discharges to the satisfaction of the Superintendent of Insurance all its liabilities to those of the existing policy-holders who dissent from the alteration.

V of 1912.

(3) Every provident society registered before the commencement of this Act under the provisions of the Provident Insurance Societies Act, 1912, shall, as soon as may be and in any event before the expiry of six months from the commencement of this Act, submit all schemes of insurance which the society has in operation at the commencement of this Act to examination by an actuary <sup>2</sup>[and shall, before the expiration of six months from the commencement of the Insurance (Amendment) Act, 1941, send the report of the actuary], thereon to the Superintendent of Insurance.

XIII of 1941.

(4) The report of the actuary shall state in respect of each scheme whether <sup>3</sup>[the rates, advantages, terms and conditions are workable and sound], and, where no actuarial report such as is referred to in section 81 has been made within the two years preceding the examination, the report shall also state whether the assets of the society are sufficient to

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<sup>1</sup> These words were substituted for the words "that the scheme is sound" by s. 46 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words, brackets and figures were substituted for the words " and shall send the report of the actuary ", *ibid.*

<sup>3</sup> These words were substituted for the words " it is actuarially sound ", *ibid.*

## (Part III.—Provident Societies.)

meet its liabilities under the existing schemes, and if not, how in the opinion of the actuary the existing contracts should be modified.

<sup>1</sup>[(5) If the rates, advantages, terms and conditions of any scheme are not reported by the actuary to be workable and sound, the Superintendent of Insurance shall give notice to the society prohibiting the scheme, and the society shall not after its receipt of such notice enter into any new contract of insurance under the scheme, but all rights and liabilities in respect of contracts of insurance entered into by the society before receipt of the notice shall, subject to the provisions of sub-section (6), continue as if the notice had not been given.]

(6) Where a scheme is <sup>2</sup>[prohibited] under the provisions of sub-section (5) the society shall, where its assets are sufficient to meet all existing liabilities, set apart out of its assets the sum sufficient in the opinion of the actuary to meet the liabilities incurred under the scheme so <sup>2</sup>[prohibited], and, where its assets are not so sufficient, within three months from the date of the <sup>3</sup>[prohibition], apply to the Court for a modification of its existing contracts or failing such modification for the winding up of the society.

Separation of  
accounts and  
funds.

84. Where a provident society effects policies of insurance in connection with more than one of the classes of contingency separately specified in <sup>4</sup>[sub-section (2) of] section 65, the receipts and payments in respect of each such class shall be recorded in a separate account in the cash book kept in accordance with section 79.

Investment of  
funds.

85. (1) Every provident society shall, unless it already holds invested in Government securities or securities mentioned or referred to in clauses (c) and (d) of section 20 of the Indian Trusts Act, 1882, not <sup>II</sup> of 1882. less than fifty per cent. of the total assets of the

<sup>1</sup> This sub-section was substituted by s. 46 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> This word was substituted for the word "discontinued", *ibid.*

<sup>3</sup> This word was substituted for the word "discontinuance", *ibid.*

<sup>4</sup> These words, brackets and figure were inserted by s. 12 of the Insurance (Amendment) Act, 1940 (20 of 1940).

## (Part III.—Provident Societies.)

society, <sup>1</sup>[invest in such securities every increase that takes place in those assets and in that part of those assets which is held in cash as soon as practicable after the increase takes place and in any case within six months of its taking place], until the total amount so invested amounts to not less than fifty per cent. of the total assets of the society, and shall thereafter keep invested in such securities not less than fifty per cent. of the total assets of the society.

<sup>2</sup>[Provided that for the purpose of determining the amount to be invested under this sub-section, any deposit made in cash under section 73 shall be taken into account as if such cash were Government securities amounting at the market value of the securities on the date the deposit was made to the total deposited in cash.]

(2) No funds or investments of a provident society except a deposit made under section 73 shall be kept otherwise than in the name of the society <sup>3</sup>[or in the name of a public officer approved by the Central Government].

(3) No loan shall be made out of the assets of a provident society to <sup>4</sup>[any director, manager, managing agent, auditor, actuary, officer or partner of the society], except on the security of a policy of insurance held in the society and within its surrender value and no such loan shall be made to any concern of which <sup>5</sup>[a director, manager, managing agent, actuary, officer or partner of the society is a director, manager, managing agent, actuary, officer or partner].

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<sup>1</sup> These words were substituted for the words "invest all surplus assets in such securities" by s. 47 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> This proviso was added, *ibid.*

<sup>3</sup> These words were added by s. 28 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>4</sup> These words were substituted for the words "any director or officer of the society" by s. 13 of the Insurance (Amendment) Act, 1940 (20 of 1940).

<sup>5</sup> These words were substituted for the words "a director or officer of the society is a director or partner", *ibid.*

*(Part III.—Provident Societies.)*

<sup>1</sup>[(3A) Any loan prohibited under sub-section (3), made before and outstanding at the commencement of the Insurance (Amendment) Act, 1940, shall be repaid before the 1st day of January, 1941, and in case of default the director, manager, managing agent, auditor, actuary, officer or partner who has received the loan or is connected with the concern which has received the loan, as the case may be, shall cease to hold office in or be a partner of the society and shall be ineligible to hold office in or be a partner of the society until the loan is repaid.] xx of 1940.

(4) Any director, <sup>2</sup>[manager, managing agent, auditor, actuary, officer or partner], of a society which contravenes the provisions of sub-section (3) who is knowingly a party to the contravention, shall without prejudice to any other penalty which he may incur be jointly and severally liable to the society for the amount of the loan, and such amount, together with interest from the date of the loan at such rate not exceeding twelve per cent. per annum as the Superintendent of Insurance may fix, shall on application by the Superintendent of Insurance to any Civil Court of competent jurisdiction be recoverable by execution as if a decree for such amount had been passed by that Court.

<sup>3</sup>[(5) The provisions of section 86D of the Indian Companies Act, 1913, shall not apply to a loan granted to a director of a provident society being a company if the loan is one granted on the security of a policy on which the society bears the risk and the policy was issued to the director on his own life and the loan is within the surrender value of the policy.] vii of 1913

Inspection of  
books.

86. The books of every provident society shall at all reasonable times be open to inspection by the Superintendent of Insurance or any person appointed by him in this behalf or by any member or policyholder of the society who has made an application in this behalf to the Superintendent of Insurance

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<sup>1</sup> This sub-section was inserted by s. 13 of the Insurance (Amendment) Act, 1940 (20 of 1940).

<sup>2</sup> These words were substituted for the words "or officer", *ibid.*

<sup>3</sup> This sub-section was inserted by s. 47 of the Insurance (Amendment) Act, 1941 (13 of 1941).

## (Part III.—Provident Societies.)

87. (1) The Superintendent of Insurance shall at least once in two years and may, if he thinks fit, at any time visit personally or depute a suitable person to visit the principal office of a provident society <sup>Inquiry by or on behalf of Superintendent of Insurance.</sup> <sup>1</sup>[or the principal office in British India of a society having its principal place of business or domicile outside British India] and inquire into the solvency of the society and the manner in which the business of the society is conducted, or may, after giving notice to the society and giving it an opportunity to be heard, direct such an inquiry to be made by an auditor or actuary appointed by him <sup>2</sup>[or by both an auditor and an actuary appointed simultaneously, or first by an auditor only or an actuary only and afterwards by an actuary or auditor].

(2) For the purposes of any such inquiry the Superintendent or the auditor or actuary, as the case may be, shall be entitled to examine all books and documents of the society and may demand from the society or any officer of the society such explanations as he may require on any matter relating to the affairs of the society.

<sup>3</sup>[(3) The results of any such inquiry shall be recorded in writing by the person making the inquiry, and four copies of the record shall be supplied to the Superintendent of Insurance; and when the inquiry is completed a copy of the record or of each such record where more than one are made in the course of the same inquiry, shall be sent by the Superintendent of Insurance to the society concerned and shall be open to inspection by any member or policy-holder of the society.]

<sup>4</sup>[(4) All expenses of and incidental to any inquiry made by an auditor or actuary under sub-section (1) including any expenses incurred before the date on which the Superintendent of Insurance receives notice of an appeal under clause (e) of sub-section (1) of section 110 shall be defrayed by the provident

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<sup>1</sup> These words were inserted by s. 48 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words were added, *ibid.*

<sup>3</sup> This sub-section was substituted, *ibid.*

<sup>4</sup> This sub-section was added, *ibid.*



## (Part III —Provident Societies.)

society, shall have priority over other debts due from the society, and shall be recoverable as an arrear of land-revenue.]

Winding up  
by Court and  
voluntary  
winding up.

88. (1) The Court may order the winding up of a provident society being a company incorporated under the Indian Companies Act, 1913, <sup>1</sup>[or under VII of 1913 the Indian Companies Act, 1882, or under the Indian VI of 1882. Companies Act, 1866, or under any Act repealed X of 1866. thereby], and the provisions of <sup>2</sup>[the Indian Companies Act, 1913], shall, subject to the provisions of VII of 1913. this Part, apply accordingly.

(2) In addition to the grounds on which such an order may be based, the Court may order the winding up of a provident society, if the registration of the society is cancelled by the Superintendent of Insurance under sub-section (4) of section 70 and he applies for the winding up of the society.

(3) A provident society being a company incorporated under the Indian Companies Act, 1913, <sup>1</sup>[or VII of 1913 under the Indian Companies Act, 1882, or VI of 1882. under the Indian Companies Act, 1866, or under any X of 1866. Act repealed thereby], may be wound up voluntarily in accordance with the provisions of <sup>2</sup>[the Indian Companies Act, 1913], but shall not be so wound up VII of 1913. except for the purpose of effecting an amalgamation or re-construction of the society or on the ground that by reason of its liabilities it cannot continue its business.

(4) A provident society not being a company incorporated under the Indian Companies Act, 1913, <sup>1</sup>[or VII of 1913. under the Indian Companies Act, 1882, or under the VI of 1882. Indian Companies Act, 1866, or under any Act X of 1866. repealed thereby], may be wound up voluntarily under this Act if a resolution is passed by the proprietors that the society should be wound up voluntarily for the purpose or on the ground specified in sub-section (3), and the Superintendent of Insurance may, in any case where he has ordered the cancellation of the registration of a society under

<sup>1</sup> These words and figures were inserted by s. 49 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words and figures were substituted for the words "that Act," *ibid.*

*(Part III.—Provident Societies.)*

sub-section (4) of section 70, order the winding up of the society under this Act.

89. The Court may make an order reducing the amount of the insurance contracts of a provident society upon such terms and subject to such conditions as the Court thinks just—

*Reduction of Insurance contracts.*

- (a) if the Superintendent of Insurance as an alternative to cancelling the registration of a society under sub-section (4) of section 70 applies to the Court in this behalf;
- (b) if while a society is in liquidation the Court thinks fit;
- (c) if when a society has been proved to be insolvent, the Court thinks fit to do so in place of making an order for the winding up of the society; or
- (d) if the Court is satisfied on an application made in this behalf by the society supported by the report of an actuary, and after giving the policy-holders an opportunity to be heard that it is desirable to do so.

90. (1) Where a provident society is to be wound up whether under the Indian Companies Act, 1913, or under this Act, the society shall, within seven days from the date of the order of the Court ordering the winding up or the passing of the resolution authorising the winding up, as the case may be, give notice thereof to the Superintendent of Insurance, and, except where the winding up is done by an order of the Court, the Superintendent of Insurance shall appoint the liquidator and shall determine the remuneration to be paid to him.

*Appointment of liquidator.*

<sup>1</sup>[Provided that if the Superintendent of Insurance is not satisfied that the assets of the society are sufficient to meet the costs of liquidation including the remuneration of the liquidator, he may decline to make such appointment, and in such a case the society shall itself appoint a liquidator who shall carry out the liquidation as if the winding up was being done by an order of the Court ]

<sup>1</sup> This proviso was added by s. 50 of the Insurance (Amendment) Act, 1941 (13 of 1941).

*(Part III.—Provident Societies.)*

(2) Any liquidator <sup>1</sup>[appointed by the Superintendent of Insurance under sub-section (1)] may be removed by the Superintendent of Insurance if satisfied that the duties entrusted to him are not being properly discharged.

**Powers of liquidator.**

91. (1) A liquidator appointed to wind up a society shall have power—

- (a) to institute or defend any legal proceedings on behalf of the society by his name of office;
- (b) to determine the contribution to be made by members of the society respectively to the assets of the society;
- (c) to investigate all claims against the society and to decide questions of priority arising between claimants;
- (d) to determine by what persons and in what proportion the costs of the liquidation <sup>2</sup>[including the remuneration of the liquidator and any expenses incurred under clause (g) of this sub-section] are to be borne;
- (e) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society;
- (f) to summon, and enforce the attendance of, witnesses and to compel the production of documents by the same means and as far as may be in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure, 1908; and
- (g) with the sanction of the Superintendent of Insurance, to employ such establishment and to obtain such assistance from an actuary or an auditor as may be necessary for the discharge of his duties.

v of 1908.

<sup>1</sup> These words, brackets and figure were substituted for the words "so appointed" by s. 50 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words, brackets and letter were inserted by s. 51, *ibid.*

*(Part III.—Provident Societies.)*

VII of 1918.

(2) The liquidator shall, for settling the list of contributories and realising the amount of contributions, have the same powers as an official liquidator appointed by the Court for the winding up of a company under the Indian Companies Act, 1913.

92. (1) As soon as a liquidator is appointed to <sup>Procedure at liquidation.</sup> wind up a society he shall take charge of all property movable or immovable of the society and of all its books and documents.

(2) If any proprietor or officer of the society or any other person retains any portion of the assets of the society or fails to deliver to the liquidator any book or document when so required by the liquidator he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and the Court may order the delivery of the assets or book or document to the liquidator.

(3) The liquidator shall within fifteen days of his appointment send notice by post to all persons who appear to him to be creditors of the society that a meeting of the creditors of the society will be held on a date not being less than twenty-one nor more than twenty-eight days after his appointment, and at a place and hour to be specified in the notice, and shall also advertise notice of the meeting once in the local official Gazette and once at least in two newspapers circulating in the province in which the society is situated.

(4) At the meeting so held the creditors shall determine whether an application shall be made for the appointment of any person as liquidator in the place of or jointly with the liquidator already appointed, or for the appointment of a committee of inspection, and, if they so resolve and an application accordingly is made at any time not later than fourteen days after the date of the meeting by any creditor appointed for the purpose at the meeting, the Superintendent of Insurance shall appoint a suitable person in place of or jointly with the liquidator already appointed, and if so desired, a committee of inspection.

*(Part III.—Provident Societies.)*

(5) The committee of inspection shall, subject to any prescribed conditions, have a general power of supervision over the acts of the liquidator and shall have the right to inspect his accounts at all reasonable times.

(6) The liquidator shall, with such assistance from an actuary as may be required, ascertain as soon as practicable the amount of the society's liability to every person appearing by the society's books to be entitled to or interested in any policy issued by the society, and shall give notice of the amount so found to each such person in the prescribed manner and each such person on receiving such notice shall be bound by the value so ascertained.

(7) The liquidator shall make a valuation of the assets of the society and an estimate of the costs of the winding up, and shall on the basis of these, settle the list of contributories.

(8) The liquidator shall apply to the Superintendent of Insurance for an order for the return of the deposit made by the society under section 73 and the Superintendent of Insurance shall on such application order the return of the deposit subject to such terms and conditions as he may think fit.

(9) In administering and distributing the assets of the society the liquidator shall have regard to any directions that may be given by the creditors or contributories at a general meeting or by the Superintendent of Insurance.

(10) The liquidator shall keep books of account in which he shall record the proceedings at all meetings attended by him, all amounts received or expended by him and any other matter that may be prescribed, and these books may, with the sanction of the Superintendent of Insurance, be inspected by any creditor or contributory.

(11) If the winding up continues for more than a year, the liquidator shall summon a meeting of the creditors and contributories at the end of the first year and of each succeeding year, and shall lay before them an account of his acts and dealings and of the conduct of the winding up, and that account together with any views expressed thereon by the

## (Part III.—Provident Societies.)

meeting shall be forwarded by the liquidator to the Superintendent of Insurance.

vii of 1913;

(12) So far as is not otherwise provided herein or is not otherwise prescribed under this Act, the liquidator shall so far as practicable follow the procedure to be followed by an official liquidator appointed by the Court for the winding up of a company under the Indian Companies Act, 1913.

<sup>1</sup>[(13) The costs of the liquidation including the remuneration of the liquidator and any expenses incurred under clause (g) of sub-section (1) of section 91 shall, if the liquidator decides that they shall be payable out of the assets of the society, be payable in priority to all other claims.]

93. (1) As soon as the affairs of a provident society are fully wound up, the liquidator shall prepare an account of the winding up showing how the winding up has been conducted and the property of the society has been disposed of and shall call a meeting of the members, creditors and contributories for the purpose of laying before it the account and giving any explanation thereof.

Dissolution of  
provident  
society.

(2) Notice of the meeting shall be sent to each person individually and shall be advertised in the local official Gazette and in at least two newspapers circulating in the province in which the society is situated.

(3) Within one week after the meeting the liquidator shall send to the Superintendent of Insurance a copy of the account and shall report to him the holding of the meeting and its date and shall forward to him a copy of the proceedings of the meeting.

(4) The Superintendent of Insurance may return the account to the liquidator if it is incomplete or unsatisfactory and may require the liquidator to carry out any further steps necessary to complete the winding up and the liquidator shall comply with such requirement and shall submit a further report to the Superintendent of Insurance within six months.

<sup>1</sup> This sub-section was added by s. 52 of the Insurance (Amendment) Act, 1941 (13 of 1941).

(Part III.—*Provident Societies.* Part IV.—*Mutual Insurance Companies and Co-operative Life Insurance Societies.*)

(5) If the Superintendent of Insurance is satisfied that the affairs of the society have been fully wound up he shall register the account of the liquidator who shall forthwith make over to the Superintendent of Insurance sums, if any, remaining undisposed of, and on the expiry of three months from the registering of the account the Superintendent of Insurance shall declare the society dissolved and cause the dissolution of the society to be notified in the local official Gazette, and the liquidator shall thereupon be discharged from further responsibility.

(6) If within a period of five years from the date on which any sums have been made over to the Superintendent of Insurance under sub-section (5) an order of a Court of competent jurisdiction has not been obtained at the instance of any claimant to such sums for their disposal the said sums shall become the property of Government.

Nominations  
and assign-  
ments.

94. (1) The provisions of section 38 and section 39 relating to assignment, transfer and nomination in the case of life insurance policies shall, subject to the provisions of this section, apply to policies of insurance issued by any provident society covering any of the contingencies specified in clause (a) of section 65.

(2) No nomination shall be valid if the person nominated is not the husband, wife, father, mother, child, grand-child, brother, sister, nephew or niece of the holder of the policy.

#### PART IV.

#### MUTUAL INSURANCE COMPANIES AND CO-OPERATIVE LIFE INSURANCE SOCIETIES.

Definitions.

95. (1) In this Part—

(a) "Mutual Insurance Company" means an insurer, being a company <sup>1</sup>[incorporated under the Indian Companies Act, 1913, or VII of 1913,

<sup>1</sup> These words and figures were substituted for the words and figures "incorporated under the provisions of the Indian Companies Act, 1913," by s. 29 of the Insurance (Amendment) Act, 1939 (11 of 1939).

(Part IV.—*Mutual Insurance Companies and Co-operative Life Insurance Societies.*)

VI of 1882.  
X of 1866.

under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby,] which has no share capital and of which by its constitution only and all policy-holders are members; and

II of 1912.

- (b) "Co-operative Life Insurance Society" means an insurer being a society registered under the Co-operative Societies Act, 1912, or under an Act of a Provincial Legislature governing the registration of co-operative societies which carries on the business of life insurance and which has no share capital on which dividend or bonus is payable and of which by its constitution only original members on whose application, the society is registered and all policy-holders are members :

Provided that any Co-operative Life Insurance Society in existence at the commencement of this Act shall be allowed a period of one year to comply with the provisions of this Act.

(2) Notwithstanding anything contained in subsection (1), other co-operative societies may be admitted as members of a Co-operative Life Insurance Society, without being eligible to any dividend, profit or bonus.

(3) A Provincial Government may, subject to any rules made by the Central Government, empower the Registrar of Co-operative Societies of the province to register co-operative societies for the insurance of cattle or crops or both under the provisions of the Co-operative Societies Act in force in the province.

(4) A Provincial Government may make rules not inconsistent with any rules made by the Central Government to govern such societies, and the provisions of this Act, in so far as they are inconsistent with those rules, shall not apply to such societies.

96. The provisions of sections 6 and 7 and of subsection (2) of section 20, so far as those provisions are inconsistent with the provisions of this Part, shall not apply, and the provisions of this Part shall apply to

Application  
of Act to  
Mutual  
Insurance  
Companies and  
Co-operative  
Life Insurance  
Societies.



(Part IV.—Mutual Insurance Companies and Co-operative Life Insurance Societies.)

Mutual Insurance Companies and Co-operative Life Insurance Societies.

Working capital of Mutual Insurance Companies and Co-operative Life Insurance Societies.

97. No Mutual Insurance Company incorporated after the 26th day of January, 1937, and no Co-operative Life Insurance Society registered after that date under the Co-operative Societies Act, 1912, or under an Act of a Provincial Legislature governing the registration of co-operative societies shall be registered under this Act, unless it has as working capital a sum of fifteen thousand rupees, exclusive of the deposit to be made before or at the time of application for registration in accordance with sub-section (2) of section 98 of this Act and of the preliminary expenses, if any, incurred in the formation of the company or society. II of 1912.

Deposits to be made by Mutual Insurance Companies and Co-operative Life Insurance Societies.

98. (1) Every Mutual Insurance Company and every Co-operative Life Insurance Society shall, in respect of the life insurance business carried on by it in British India, deposit and keep deposited with one of the offices in India of the Reserve Bank of India, for and on behalf of the Central Government, a sum of two hundred thousand rupees in cash or in approved securities estimated at the market value of the securities on the day of deposit.

(2) The deposit referred to in sub-section (1) may be made in instalments, of which the first shall be a payment, made before or at the time the application for registration under this Act is made, <sup>1</sup>[of not less than twenty-five thousand rupees] or such sum as with any deposit previously made by the insurer under the provisions of the Indian Life Assurance Companies Act, 1912, brings the amount deposited, up <sup>2</sup>[to not less than twenty-five thousand rupees] and the subsequent instalments shall be annual instalments made before the expiry of each subsequent VI of 1912

<sup>1</sup> These words were substituted for the words "of twenty-five thousand rupees" (with retrospective effect) by s. 53 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words were substituted (with retrospective effect) for the words "to twenty-five thousand rupees", *ibid.*

(Part IV.—Mutual Insurance Companies and Co-operative Life Insurance Societies.)

<sup>1</sup>[calendar year] of an amount in cash or in approved securities estimated at the market value of the securities on the day of payment of the instalment, <sup>2</sup>[equal to not less than one-third of the gross premium] income received in the previous <sup>1</sup>[calendar year].

<sup>3</sup>[(3) The provisions of sub-section (7) of section 7 shall apply in respect of a Mutual Insurance Company and a Co-operative Life Insurance Society as if for the words 'under the foregoing provisions of this section' the words and figures 'under the provisions of section 98' were substituted.]

99. No transferee or assignee of a policy issued by an insurer to whom this Part applies shall become a member of a Mutual Insurance Company or a Co-operative Life Insurance Society merely by reason of any such transfer or assignment.

Transferees and assignees of policies not to become members.

VII of 1913.

100. Notwithstanding the provisions of section 79 and section 131 of the Indian Companies Act, 1913, a Mutual Insurance Company or a Co-operative Life Insurance Society may, instead of sending the notices and the copies of the balance-sheet, revenue account and other documents which they are required to send to the members under those sections, publish such notices or documents once in a newspaper published in the English language and in a newspaper published in an Indian language circulating in the place where the principal office of the company is situated :

Publication of notices and documents of Mutual Insurance Companies and Co-operative Life Insurance Societies.

Provided that, where any members of the company are domiciled in a province other than that in which the principal office of the company is situated, publication of the 4\* \* \* \* notice of

<sup>1</sup> These words were substituted for the word "year" by s. 30 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>2</sup> These words were substituted (with retrospective effect) for the words "equal to one-third of the gross premium" by s. 53 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>3</sup> This sub-section was added (with retrospective effect), *ibid.*

<sup>4</sup> The words "balance-sheet, revenue account and" were omitted by s. 54, *ibid.*

(Part IV.—*Mutual Insurance Companies and Co-operative Life Insurance Societies.* Part V.—*Miscellaneous.*)

the meetings shall be made in a newspaper or newspapers published in the principal languages of that province and circulating therein <sup>1</sup>[and any member of the company domiciled in that province shall be entitled on application to the company to receive from it a copy of the balance-sheet and revenue account.]

Supply of documents to members.

101. Every Mutual Insurance Company and every Co-operative Life Insurance Society shall, on the application of any member made within two years from the date on which any such document is furnished to the Registrar of Companies under the provisions of section 134 of the Indian Companies Act, 1913, or to the Registrar of Co-operative Societies of the province in which the Co-operative Life Insurance Society is registered, furnish a copy of the document free of cost to the member within fourteen days of the application. VII o 1913.

## PART V.

### MISCELLANEOUS.

Penalty for default in complying with, or act in contravention of this Act.

102. (1) Except as otherwise provided in this Act, any insurer who makes default in complying with or acts in contravention of any requirement of this Act and, where the insurer is a company, any director, managing agent, manager or other officer of the company, or where the insurer is a firm, any partner of the firm who is knowingly a party to the default, shall be punishable with fine which may extend to one thousand rupees and, in the case of a continuing default, with an additional fine which may extend to five hundred rupees for every day during which the default continues.

(2) <sup>2</sup>[Any provident society as defined in Part III which makes default in complying with or acts in

<sup>1</sup> These words were added by s. 54 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words were substituted for the words "Any provident society which makes default in complying with any of the requirements of Part III" by s. 55, *ibid.*

## (Part V.—Miscellaneous.)

contravention of any of the requirements of this Act] and any director, managing agent, manager, secretary or other officer of the society who is knowingly a party to the default, <sup>1</sup>[or contravention], shall be punishable with fine which may extend to five hundred rupees or in the case of a continuing default <sup>1</sup>[or contravention] with fine which may extend to two hundred and fifty rupees for every day during which the default <sup>1</sup>[or contravention] continues.

103. (1) Any insurer or any person acting on behalf of an insurer, who <sup>2</sup>[carries on] any class of insurance business in contravention of any of the provisions of section 3, <sup>3</sup>\* \* section 7, <sup>4</sup>\* \* or section 98, or does any one or more of the acts constituting the business of insurance <sup>5</sup>[in relation to any insurance business <sup>6</sup>[carried on] in contravention of any of the said sections] shall be punishable with fine which may extend to two thousand rupees.

Penalty for transacting insurance business in contravention of sections 3, 7 and 98.

(2) Any person knowingly taking out a policy of insurance with any insurer or person guilty of an offence under sub-section (1) shall be punishable with fine which may extend to five hundred rupees:

Provided that nothing in <sup>7</sup>[sub-section (1) or sub-section (2)] shall apply to the business of re-insurance between the head office of an insurer in British India and the head office of an insurer not having an office in British India.

<sup>8</sup>[(3) Any provident society or any person acting on behalf of a provident society who carries on any class of insurance business in contravention of any of the provisions of section 70, section 73 or section

<sup>1</sup> These words were inserted by s. 55 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words were substituted for the word "transacts" by s. 56, *ibid.*

<sup>3</sup> The word and figure "section 6" were omitted, *ibid.*

<sup>4</sup> The word and figure "section 97" were omitted, *ibid.*

<sup>5</sup> These words were substituted for the words "in relation to any such class of insurance business" by s. 31 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>6</sup> These words were substituted for the word "transacted" by s. 56 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>7</sup> These words, brackets and figures were substituted for the words "this section", *ibid.*

<sup>8</sup> This sub-section was added, *ibid.*

## (Part V.—Miscellaneous.)

83 or does any one or more of the acts constituting the business of insurance in relation to any insurance business carried on in contravention of any of the said sections shall be punishable with fine which may extend to one thousand rupees.]

Penalty for  
false statement  
in document.

104. Whoever, in any return, report, certificate, balance-sheet or other document, required by or for the purposes of any of the provisions of this Act, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to one thousand rupees, or with both.

Wrongfully  
obtaining or  
withholding  
property.

105. <sup>1</sup>[(1)] Any director, managing agent, manager or other officer or employee of an insurer who wrongfully obtains possession of any property of the insurer or having any such property in his possession wrongfully withholds it or wilfully applies it to purposes other than those expressed or authorised by this Act shall, on the complaint of the insurer or any member or any policy-holder thereof, be punishable with fine which may extend to one thousand rupees and may be ordered by the Court trying the offence to deliver up or refund within a time to be fixed by the Court any such property improperly obtained or wrongfully withheld or wilfully misapplied and in default to suffer imprisonment for a period not exceeding two years.

<sup>2</sup>[(2)] This section shall apply in respect of a provident society as defined in Part III as it applies in respect of an insurer.]

Wrongfully  
diminishing  
life insurance  
fund.

106. <sup>3</sup>[(1)] If on the application of <sup>4</sup>[the Superintendent of Insurance or] an insurer or any member of an insurance company or any policy-holder or the liquidator of an insurance company (in the event of the insurer being in liquidation) the Court is satisfied that by reason of any contravention of the provisions

<sup>1</sup> Section 105 was re-numbered as sub-section (1) of that section by s. 57 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> This sub-section was added, *ibid.*

<sup>3</sup> Section 106 was re-numbered as sub-section (1) of that section by s. 58, *ibid.*

<sup>4</sup> These words were inserted, *ibid.*

## (Part V.—Miscellaneous.)

VII of 1913.

of this Act the amount of the life insurance fund has been diminished, every person who was at the time of the contravention a director, manager, liquidator or an officer of the insurer shall be deemed in respect of the contravention to have been guilty of misfeasance in relation to the insurer unless he proves that the contravention occurred without his consent or connivance and was not facilitated by any neglect or omission on his part; and the Court shall have all the powers which a Court has under sections 285 and 287 of the Indian Companies Act, 1913, and shall also have the power to assess the sum by which the amount of the life insurance fund has been diminished by reason of the misfeasance and to order any person guilty thereof to contribute to that fund the whole or any part of that sum by way of compensation.

<sup>1</sup>[(2) This section shall apply in respect of a provident society as defined in Part III as it applies in respect of an insurer.]

<sup>2</sup>[106-A. (1) When application is made to the Court for the making of any order to which this section applies the Court shall, unless the Superintendent of Insurance has himself made the application or has been made a party thereto, send a copy of the application together with intimation of the date fixed for the hearing thereof to the Superintendent of Insurance, and shall give him an opportunity of being heard.

Notice to and hearing of Superintendent of Insurance.

(2) The orders to which this section applies are the following, namely:—

- (a) an order for the attachment in execution of a decree of any deposit made under section 7 or section 98;
- (b) an order under section 9 or section 59 for the return of any such deposit;
- (c) an order under section 36 sanctioning any arrangement for the transfer or amalgamation of life insurance business or any order consequential thereon:

<sup>1</sup> This sub-section was added by s. 58 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> This section was inserted by s. 14 of the Insurance (Amendment) Act, 1940 (20 of 1940).

## (Part V.—Miscellaneous.)

- (d) an order for the winding up of an insurance company or a provident society;
- (e) an order under section 58 confirming a scheme for the partial winding up of an insurance company;
- (f) an order under section 89 reducing the amount of the insurance contracts of a provident society.]

Previous  
sanction of  
Advocate  
General for  
institution of  
proceedings.

107. <sup>1</sup>[(1)] Except where proceedings are instituted by the Superintendent of Insurance, no proceedings under this Act against an insurer or any director, manager or other officer of an insurer or any person who is liable under sub-section (2) of section 41 shall be instituted by any person unless he has previous thereto obtained the sanction of the Advocate General of the province where the principal place of business in British India of such insurer is situate to the institution of such proceedings.

<sup>2</sup>[(2) This section shall apply in respect of a provident society as defined in Part III as it applies in respect of an insurer.]

Power of  
Court to  
grant relief.

108. If in any proceedings, civil or criminal, it appears to the Court hearing the case that a person is or may be liable in respect of negligence, default, breach of duty or breach of trust but that he has acted honestly and reasonably and that having regard to all the circumstances of the case he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the Court may relieve him either wholly or partly from his liability on such terms as it may think fit.

Cognizance of  
offence.

109. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

<sup>1</sup> Section 107 was re-numbered as sub-section (1) of that section by s. 59 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> This sub-section was added, *ibid.*

## (Part V.—Miscellaneous.)

**110.** (1) An appeal shall lie to the Court having **Appeals** jurisdiction from any of the following orders, namely:—

- (a) an order under section 3 refusing to register, or cancelling the registration of, an insurer;
- (b) an order under section 5 directing the insurer to change his name;
- (c) an order under section 42 cancelling the licence issued to an agent;
- (d) an order under section 75 refusing to register an amendment of rules;
- (e) an order under section 87 directing an inquiry by an auditor or actuary; or
- (f) an order made in the course of the winding up or insolvency of an insurer or a provident society.

(2) The Court having jurisdiction for the purposes of sub-section (1) shall be the principal Court of civil jurisdiction within whose local limits the principal place of business of the insurer concerned is situate.

(3) An appeal shall lie from any order made under sub-section (1) to the authority authorised to hear appeals from the decisions of the Court making the same and the decision on such appeal shall be final.

<sup>1</sup>[(4) No appeal under this section shall be entertained unless it is made before the expiration of four months from the date on which the order appealed against was communicated to the appellant.]

<sup>2</sup>[**110-A.** The Superintendent of Insurance may by general or special order delegate any of his powers or duties under this Act to any person subordinate to him. The exercise or discharge of any of the powers or duties so delegated shall be subject to such restrictions, limitations and conditions, if any, as the Superintendent of Insurance may impose, and shall be subject to his control and revision.]

*Delegation of powers and duties of Superintendent of Insurance.*

**110-B.** Every document which is required by this Act or by any rule made thereunder to be signed by

*Signature of documents.*

<sup>1</sup> This sub-section was added by s. 60 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> Sections 110-A and 110-B were inserted by s. 15 of the Insurance (Amendment) Act, 1940 (20 of 1940).



(Part V.—Miscellaneous.)

the Superintendent of Insurance or by any person subordinate to him or by any officer authorised by him under sub-section (1) of section 42 shall be deemed to be properly signed, if it bears a facsimile of the signature of such Superintendent, person or officer printed, engraved, lithographed or impressed by any other mechanical process approved by the Central Government.]

Service of  
notices.

111. (1) Any process or notice required to be served on an insurer or provident society shall be sufficiently served if addressed to any person registered with the Superintendent of Insurance as a person authorised to accept notices on behalf of the insurer or provident society and left at, or sent by registered post to, the address of such person as registered with the Superintendent of Insurance.

(2) Any notice or other document which is by this Act required to be sent to any policy-holder may be addressed and sent to the person to whom notices respecting such policy are usually sent and any notice so addressed and sent shall be deemed to be notice to the holder of such policy:

Provided that, where any person claiming to be interested in a policy as transferee, assignee or nominee has given to an insurer or to a provident society notice in writing of his interest, any notice which is by this Act required to be sent to policy-holders shall also be sent to such person at the address specified by him in his notice.

Declaration of  
*interim*  
bonuses.

112. Notwithstanding anything to the contrary contained in this Act an insurer carrying on the business of life insurance shall be at liberty to declare an *interim* bonus or bonuses to policy-holders whose policies mature for payment by reason of death or otherwise during the inter-valuation period on the recommendation of the investigating actuary made at the last preceding valuation.

Acquisition of  
surrender  
values by  
policy.

113. <sup>1</sup>[(1) A policy of life insurance under which the whole of the benefits become payable either on the

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<sup>1</sup> These sub-sections were substituted for the original sub-sections (1) and (2) by s. 61 of the Insurance (Amendment) Act, 1941 (13 of 1941).

*(Part V.—Miscellaneous.)*

occurrence, or at a fixed interval or fixed intervals after the occurrence, of a contingency which is bound to happen, shall, if all premiums have been paid for at least three consecutive years in the case of a policy issued by an insurer, or five years in the case of a policy issued by a provident society as defined in Part III, acquire a guaranteed surrender value, to which shall be added the surrender value of any subsisting bonus already attached to the policy, and every such policy issued by an insurer shall show the guaranteed surrender value of the policy at the close of each year after the second year of its currency or at the close of each period of three years throughout the currency of the policy:

Provided that the requirements of this sub-section as to the addition of the surrender value of the bonus attaching to a policy at surrender shall be deemed to have been complied with where the method of calculation of the guaranteed surrender value of the policy makes provision for the surrender value of the bonus attaching to the policy:

Provided further that the requirements of this sub-section as to the showing of the guaranteed surrender value on a policy shall be deemed to have been complied with where the insurer shows on the policy the guaranteed surrender value of the policy by means of a formula accepted in this behalf by the Superintendent of Insurance as satisfying the said requirements:

Provided further that the provisions of this sub-section as to the showing of the guaranteed surrender value on a policy shall not take effect until after the expiry of six months from such date as the Central Government may, by notification in the official Gazette, appoint in this behalf.

(2) Notwithstanding any contract to the contrary, a policy which has acquired a surrender value shall not lapse by reason of the non-payment of further premiums but shall be kept alive to the extent of the paid-up sum insured, and the paid-up sum insured shall for the purposes of this sub-section include in full all subsisting reversionary bonuses that have already attached to the policy, and shall, where

## (Part V.—Miscellaneous.)

the policy is one on which the maximum number of annual premiums payable is fixed and the premiums are of uniform amount, be before the inclusion of such bonuses not less than the amount bearing to the total sum insured by the policy exclusive of bonuses the same proportion as the total period for which premiums have already been paid bears to the maximum period for which premiums were originally payable.

(3) A policy kept alive to the extent of the paid-up sum insured under sub-section (2) shall not be entitled by virtue of that sub-section to participate in any profits declared distributable after the conversion of the policy into a paid-up policy.]

<sup>1</sup>[(4)] <sup>2</sup>[Sub-section (2) and sub-section (3) shall not apply];

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<sup>4</sup>[(a) where the paid up sum insured by a policy, being a policy issued by an insurer, is less than one hundred rupees inclusive of any attached bonus, or takes the form of an annuity of less than twenty-five rupees, or where the paid up sum insured by a policy, being a policy issued by a provident society as defined in Part III, is less than fifty rupees inclusive of any attached bonus or takes the form of an annuity of less than twenty-five rupees, or]

<sup>5</sup>[(b)] where the parties after the default has occurred in the payment of the premium agree in writing to some other arrangement, or

<sup>6</sup>[(c)] to policies in which the surrender value is automatically applied under the terms of the contract to maintaining the policy in

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<sup>1</sup> The original sub-section (3) was re-numbered (4) by s. 61 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words, brackets and figures were substituted for the words "This section shall not apply to", *ibid.*

<sup>3</sup> The original clause (a) was omitted, *ibid.*

<sup>4</sup> This clause was substituted for the original clause (b), *ibid.*

<sup>5</sup> The original clause (c) was re-lettered (b), *ibid.*

<sup>6</sup> The original clause (d) was re-lettered (c), *ibid.*

## (Part V.—Miscellaneous.)

force after its lapse through non-payment of premium.

114. (1) The Central Government may, subject to the condition of previous publication by notification in the official Gazette, make rules to carry out the purposes of this Act.

Power of  
Central  
Government to  
make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

- (a) the qualifications to be possessed by actuaries;
- <sup>1</sup>[(b) the manner in which it shall be determined which of the transactions of an insurer are to be deemed for the purposes of this Act to be insurance business transacted in India or in British India, as the case may be;]
- (c) the procedure to be followed by the Reserve Bank of India in dealing with deposits made in pursuance of this Act, including the receipt of, custody of, withdrawal of, and payment of interest on securities lodged as such deposits, and their inspection and verification by the Superintendent of Insurance;
- (d) the form referred to in clause (d) of sub-section (2) of section 16;
- (e) the manner in which the prospectuses and tables referred to in sub-section (1) of section 41 shall be published and the form in which they shall be drawn up;
- (f) the matters to be prescribed for the purposes of section 48;
- (g) the manner in which licences to act as insurance agents may be <sup>2</sup>[applied for,] issued or cancelled;

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<sup>1</sup> This clause was substituted by s. 62 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> These words were inserted, *ibid.*

## (Part V.—Miscellaneous.)

- (h) the contingencies other than those specified in clauses (a) to (f) of <sup>1</sup>[sub-section (2) of] section 65 on the happening of which money may be paid by provident societies;
- (i) the matters other than those specified in clauses (a) to (o) of sub-section (1) of section 74 on which a provident society shall make rules;
- (j) the form of any account, return or register required by Part III and the manner in which such account, return or register shall be verified;
- (k) subject to the provisions of this Act, the fees payable thereunder and the manner in which they are to be collected; <sup>2</sup>\*
- (l) the conditions and the matters which may be prescribed under sub-sections (5), <sup>3</sup>[(6)], (10) and (12) of section 92;
- <sup>4</sup>[(m) any other matter which is to be or may be prescribed.]

5\*                      \*                      \*                      \*

<sup>6</sup>[(3) Every rule made under this section shall be laid as soon as may be after it is made before each of the Chambers of the Central Legislature, while it is in session, for a total period of one month which may be comprised in one session or in two or more sessions, and if before the expiry of that period, or where the period for which the rule is so laid before one Chamber does not coincide with that for which it is so laid before the other, before the expiry of the later of these periods, both Chambers agree in making any modification in the rule or both Chambers agree that the rule should not be made, the rule

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<sup>1</sup> These words, brackets and figure were inserted by s. 16 of the Insurance (Amendment) Act, 1940 (20 of 1940).

<sup>2</sup> The word " and " was omitted, *ibid.*

<sup>3</sup> These brackets and figure were inserted by s. 32 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>4</sup> This clause was inserted by s. 16 of the Insurance (Amendment) Act, 1940 (20 of 1940).

<sup>5</sup> The proviso was omitted, *ibid.*

<sup>6</sup> This sub-section was inserted, *ibid.*

## (Part V.—Miscellaneous.)

shall thereafter have effect only in such modified form or be of no effect, as the case may be.]

V of 1912

<sup>1</sup>[(4)] All rules made by a Local Government under the provisions of section 24 of the Provident Insurance Societies Act, 1912, and in force at the commencement of this Act shall so far as not inconsistent with the provisions of Part III continue in force and have effect as if duly made under this section until they are replaced by rules made under this section.

115. The Central Government may, on the application or with the consent of an insurer, not being a company, alter the forms contained in the Schedules as respects that insurer, for the purpose of adapting them to the circumstances of that insurer:

Alteration of forms.

Provided that nothing done under this section shall exempt the insurer from supplying all information required under this Act so far as it is possible for the insurer to do so.

116. <sup>2</sup>[(1)] The Central Government may, by notification in the official Gazette, exempt any insurer constituted, incorporated or domiciled in an Indian State <sup>3</sup>[from any of the provisions of this Act which may be specified in the notification] either absolutely or subject to such conditions or modifications as may be specified in the notification.

Power to exempt from certain requirements.

<sup>4</sup>[Provided that no such notification shall be issued unless the Central Government is satisfied that insurers constituted, incorporated or domiciled in British India are under the law or practice in such State entitled therein to benefits corresponding to those conferred by the notification or to benefits which in the opinion of the Central Government are at least equivalent thereto.]

<sup>1</sup> The original sub-section (3) was re-numbered (4) by s. 16 of the Insurance (Amendment) Act, 1940 (20 of 1940).

<sup>2</sup> Section 116 was re-numbered as sub-section (1) of that section by s. 63 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>3</sup> These words were substituted by s. 17 of the Insurance (Amendment) Act, 1940 (20 of 1940).

<sup>4</sup> This proviso was added, *ibid.*

## (Part V.—Miscellaneous.)

<sup>1</sup>[(2) This section shall apply in respect of provident societies as defined in Part III as it applies in respect of insurers.]

Summary of  
returns to be  
published.

<sup>2</sup>[116-A. The Central Government shall every year cause to be published, in such manner as it may direct, a summary of the accounts, balance-sheets, statements, abstracts and other returns under this Act or purporting to be under this Act which have been furnished in pursuance of the provisions of this Act to the Superintendent of Insurance during the year preceding the year of publication, and may append to such summary any note of the Superintendent of Insurance or of the Central Government and any correspondence :

Provided that nothing in this section shall require the publication of the statements referred to in sub-section (1) of section 28.]

Saving of  
provisions of  
Indian Companies Act,  
1913.

117. Nothing in this Act shall affect the liability of an insurer being a company <sup>3</sup>[or a provident society as defined in Part III being a company] to comply with the provisions of the Indian Companies Act, 1913, in matters not otherwise specifically <sup>VII of 1913.</sup> provided for by this Act.

Exemptions.

118. Nothing in this Act shall apply to any Trade Union registered under the Indian Trade Unions Act, 1926, or to any insurance business carried on by the <sup>XVI of 1926.</sup> Central or by a Provincial Government, or to any provident fund to which the provisions of the Provident Funds Act, 1925, apply, or, if the Superintendent of Insurance so orders in any case, and to such extent <sup>XIX of 1926.</sup> <sup>4</sup>[or subject to such conditions or modifications] as he specifies in such order, to—

(a) any fund in existence and officially recognised by the Central Government before the 27th day of January, 1937, maintained

<sup>1</sup> This sub-section was added by s. 63 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> This section was inserted by s. 64, *ibid.*

<sup>3</sup> These words were inserted by s. 65, *ibid.*

<sup>4</sup> These words were inserted by s. 66, *ibid.*

## (Part V.—Miscellaneous.)

by or on behalf of Government servants or Government pensioners for the mutual benefit of contributors to the fund and of their dependants, or

- (b) any mutual or provident insurance society composed wholly of Government servants or of railway servants which has been exempted from any or all of the provisions of the Provident Insurance Societies Act, 1912.

IV of 1912

<sup>1</sup>[119. Any person may on payment of a fee of five rupees inspect the documents filed by an insurer with the Superintendent of Insurance under clause (f) of sub-section (2) of section 3, and may obtain a copy of any such document or part thereof on payment in advance at the prescribed rate for the making of the copy.]

Inspection and supply of copies of published prospectus, etc.

120. The market value on the day of deposit of securities deposited in pursuance of any of the provisions of this Act with the Reserve Bank of India shall be determined by the Reserve Bank of India whose decision shall be final.

Determination of market value of securities deposited under this Act.

IV of 1882.

121. To the Exception to section 180 of the Transfer of Property Act, 1882, the following words and figures shall be added, namely:—

Amendment of section 180, Act IV of 1882.

IV of 1938.

“or affects the provisions of section 38 of the Insurance Act, 1938”.

IX of 1908.

<sup>2</sup>[122. In Item No. 86 in the First Schedule to the Indian Limitation Act, 1908,—

Amendment of Schedule I, Act IX of 1908.

- (a) for the entry in the first column the following shall be substituted, namely:—

“(a) On a policy of insurance when the sum insured is payable after proof of the death has been given to or received by the insurers.

<sup>1</sup> This section was substituted by s. 67 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> This section was inserted by s. 68, *ibid.* (The original s. 122 was repealed by Act 11 of 1939.)



*(Part V.—Miscellaneous.)*

- (b) On a policy of insurance when the sum insured is payable after proof of the loss has been given to or received by the insurers.';
- (b) for the entry in the third column, the following shall be substituted, namely:—
  - '(a) The date of the death of the deceased.
  - (b) The date of the occurrence causing the loss.'

**Repeals.**

**123.** The Provident Insurance Societies Act, 1912, **v** of 1912. the Indian Life Assurance Companies Act, 1912, and **vi** of 1912. the Indian Insurance Companies Act, 1928, are **xx** of 1928. hereby repealed.

*(The First Schedule.)*

## THE FIRST SCHEDULE.

*(See Section 11.)**Regulations and Forms for the preparation of Balance-Sheet.*

## PART I

*Regulations.*

1. The balance-sheet required to be prepared in respect of every class of business carried on by an insurer is, in the form in which it is set out in Part II of this Schedule (Form A), appropriate to a case where the insurer maintains a separate fund in respect of life insurance business.

2. The balance-sheet of life insurance business shall be prepared as a separate document. The balance-sheet of any class of business may be prepared as a separate document instead of being incorporated by the addition of columns and headings in the general balance-sheet, but the totals of each such separate balance-sheet (showing the total assets of the class of business, the balance at the credit of the life insurance fund or other separate fund or account, the amount of shareholders' undivided profits, and outstanding liabilities) must in any case be incorporated in the general balance-sheet.

3. If any combined balance-sheet is for any purpose issued by an insurer, it shall be in accordance with the Form set out in this Schedule, and there shall not be included among the assets shown in any such combined balance sheet any amount in respect of any holding in or advance to any insurer whose assets and liabilities have been incorporated therein. Every combined balance-sheet must show clearly on the face thereof that it is a combined balance-sheet and must set out fully the name of every insurer whose assets and liabilities have been incorporated therein; if the assets and liabilities of any person not being an insurer are included in a combined balance-sheet the fact must be stated thereon.

4. Where any guarantee has been given by an insurer (otherwise than in the ordinary course of re-insurance business) in respect of the policies of any other insurer, the balance-sheet of the insurer by whom the guarantee was given must show clearly the name of every insurer whose policies have been so guaranteed and the extent of the guarantee:

Provided that this regulation shall not apply where a combined balance-sheet is issued incorporating the assets and liabilities of the insurer whose policies are guaranteed.

5. Where any part of the assets of an insurer is deposited in any place outside British India as security for the owners of policies issued in that place, the balance-sheet shall state that part of the assets has been so deposited, and, if any such part forms part of the life insurance fund, shall show the amount thereof and the place where it is deposited. Where any combined balance-sheet is issued by an insurer for any purpose, the information required by this regulation shall be shown in the aggregate in respect of all the insurers whose assets and liabilities have been incorporated in the balance-sheet.

*(The First Schedule.)*

6. There shall be appended to the balance sheet a statement in Form AA as set out in Part II of this Schedule showing the market value and the book value of the assets in India.

7. Every balance-sheet shall contain the following certificates, namely:—

- (a) a certificate signed by the same persons as are required by this Act to sign the balance-sheet explaining how the values as shown in the balance-sheet of the Investments in Stocks and Shares have been arrived at, and how the market value thereof has been ascertained for the purpose of comparison with the values so shown;
- (b) a certificate signed by the same persons as are required by this Act to sign the balance-sheet and signed also, so far as respects the value of any items, shown in the balance-sheet under the heading of "Reversions and Life Interests", by an actuary, certifying that the values of all the assets have been reviewed as at the date of the balance-sheet, and that in their belief the assets set forth in the balance-sheet are shown in the aggregate at amounts not exceeding their realisable or market value under the several headings—"Loans", "Reversions and Life Interests", "Investments", "Agent's Balances", "Outstanding Premiums", "Interest, Dividends and Rents outstanding", "Interest, Dividends and Rents accruing but not due", "Amounts due from other Persons or Bodies carrying on Insurance Business", "Sundry Debtors", "Bills Receivable", "Cash" and the several items specified under "Other Accounts".

Provided that if the persons signing the certificate are unable to certify that the assets set forth in the balance-sheet are so shown as aforesaid, a full explanation of the bases upon which the values shown in the balance-sheet have been assessed shall be given in the certificate;

- (c) a certificate signed by the same persons as are required by this Act to sign the balance-sheet and by the auditor certifying that no parts of the assets of the life insurance fund has been directly or indirectly applied in contravention of the provisions of this Act relating to the application and investment of life insurance funds; and
- (d) certificates signed by the auditor (which shall be in addition to any other certificate or report which he is required by law to give with respect to the balance sheet) certifying—
  - (i) that he has verified the cash balances and the securities relating to the insurer's loans, reversions and life interests, and investments;
  - (ii) to what extent, if any, he has verified the investments and transactions relating to any trusts undertaken by the insurer as trustee and
  - (iii) in the case of a combined balance-sheet, that he has audited the balance-sheet and accounts of every insurer whose assets and liabilities are incorporated

*(The First Schedule.)*

therein, or that any such balance-sheet and accounts, which have not been audited by him have been certified by independent auditors. The said certificate shall contain a reference to such reservations, if any, as may have been made by any auditor upon any report or certificate given by him with respect to the balance-sheet and accounts of any insurer whose assets and liabilities are incorporated in the combined balance-sheet.

8. If the values shown in the balance-sheet in respect of "Holdings in Subsidiary Companies" or "House property (i) in India (ii) out of India" have been increased since the last previous balance-sheet, the certificate required by paragraph (b) of the last foregoing regulation shall state the amount of every increase not solely due to the cost of subsequent additions or, as respects holdings in controlled companies, to increased profits, and shall contain an explanation of the reason therefor.

9. For the purposes of this Schedule the following expressions have the meanings hereby respectively assigned to them, namely :—

- (a) "combined balance-sheet" includes any combined statement made by an insurer of assets and liabilities in the form of a balance-sheet which includes the assets and liabilities of any other insurer; and
- (b) "market value" means as respects any assets the market value thereof as ascertained from published market quotations, or, if there be no such value, its fair value as between a willing buyer and a willing seller.

(The First Schedule.)

**PART II.**  
**FORMS.**  
**FORM 1A.**  
**Form of Balance-Sheet.**

Balance-Sheet of 19 .

	Life and Annuity Business. (1)	Other Classes of Business. (2)*	Total.		Life and Annuity Business. (1)	Other Classes of Business. (2)*	Total.
—	Rs. A. P.	Rs. A. P.	Rs. A. P.	—	Rs. A. P.	Rs. A. P.	Rs. A. P.
Shareholders' capital (each class to be stated separately) . . . . .				Loans :—			
Authorised :				On Mortgages of property within British India . . . . .			
..... shares of Rs. .... each Rs. . . . .				On Mortgages of property outside British India . . . . .			
Subscribed :				On security of municipal and other public rates . . . . .			
..... shares of Rs. .... each Rs. . . . .				On Stocks and Shares . . . . .			
Called up :				On Insurer's Policies within their surrender value . . . . .			
..... shares of Rs. .... each Rs. . . . .				On personal security . . . . .			
Less Unpaid calls . . . . .				To Subsidiary Companies (other than Reversionary) (f) . . . . .			
Reserve or Contingency Accounts (a) :				Reversions and Life Interests purchased . . . . .			
Investment Reserve Account . . . . .				Loans on Reversions and Life Interests, Debentures and Debenture stocks of Subsidiary Reversionary Companies (f) . . . . .			
Profit and Loss Appropriation Account Balance. . . . .				Ordinary Stocks and Shares of Subsidiary Reversionary Companies (f) . . . . .			
Balances of Funds and Accounts . . . . .				Loans to subsidiary Reversionary Companies (f) . . . . .			
Life Insurance Fund . . . . .				Investments : . . . . .			
Fire Insurance Business Account . . . . .				Deposit with the Reserve Bank of India (securities to be specified) . . . . .			
Marine Insurance Business Account . . . . .				Indian Government Securities . . . . .			
***Miscellaneous Insurance Business Account *[(m)] . . . . .				Provincial Government Securities . . . . .			
Other accounts, if any (to be specified) (i) . . . . .				British, British Colonial and British Dominion Government Securities . . . . .			
Pension or Superannuation Accounts (b) . . . . .							
Debenture Stock per cent . . . . .							

## (The First Schedule.)

Loans and Advances (c) . Bills payable (c) . Estimated Liability in respect of outstanding claims, whether due or intimated (d) . Annuities due and unpaid (d) . Outstanding Dividends . Amounts due to Other Persons or Bodies carrying on Insurance Business (c) . Sundry Creditors (including outstanding and accruing expenses and Taxes) (c) . Other sums owing by the insurer (particulars to be given) (c) . Contingent Liabilities (to be specified) (e) .	Rs.	Foreign Government Securities . Indian Municipal Securities . British and Colonial Securities . Foreign Securities . Bonds, Debentures, Stocks and other securities whereon Interest is guaranteed by the Indian Government or a Provincial Government . Bonds, Debentures, Stocks and other Securities whereon Interest is guaranteed by the British or any Colonial Government . Bonds, Debentures, Stocks and other Securities whereon Interest is guaranteed by any Foreign Government . Debentures of any railway in India . Debentures of any railway out of India . Preference or guaranteed Shares of any railway in India . Preference or guaranteed Shares of any railway out of India . Railway Ordinary Stocks (i) in India (ii) out of India . Other Debentures and Debenture Stock of Companies incorporated (i) in India (ii) out of India . Other guaranteed and preference Stocks and Shares of Companies incorporated (i) in India (ii) out of India . Other Ordinary Stocks and Shares of Companies incorporated (i) in India (ii) out of India . Holdings in Subsidiary Companies (f) . House property (i) in India (ii) out of India . Freehold and Leasehold ground rents and rent charges . Agent's Balances . Outstanding Premiums (g) [(d)] . Interest, Dividends and Rents outstanding (d) .	Carried over
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\* The words "Accident and" were omitted by s. 18 of the Insurance (Amendment) Act, 1940 (20 of 1940).

\* These brackets and letter were added by s. 69 of the Insurance (Amendment) Act, 1941 (18 of 1941).

## (The First Schedule.)

## FORM A—contd.

	Life and Annuity Business. (1)	Other Classes of Business. (2)*	Total.		Life and Annuity Business. (1)	Other Classes of Business. (2)*	Total.
	Rs. A. P.	Rs. A. P.	Rs. A. P.	Brought forward Interest, Dividends and Rents accruing but not due (d) Amounts due from other Persons or Bodies carrying on Insurance Business (h) Sundry Debtors (i) Bills Receivable Cash : At Bankers on Deposit Account At Bankers on Current Account and in hand At Call and Short Notice (j) Other Accounts (to be specified) (k)	Rs. A. P.	Rs. A. P.	Rs. A. P.

\* Assets and Liabilities, Shareholders' Capital and Reserves, not allocated to any class of business specified in column (1) must be shown in column (2)

## NOTES.

- (a) The Reserves or Contingency Accounts must be separately stated.  
 (b) If the Insurer has not full and unrestricted control of the assets constituting the Pension or Superannuation Accounts, either those Accounts and the assets and liabilities relating thereto must be omitted from the balance-sheet or the assets of which the insurer has not such control must be clearly indicated on the face of the balance-sheet.  
 (c) If the Insurer has deposited security as cover in respect of any of these items, the amount and nature of the securities so deposited must be clearly indicated on the face of the balance-sheet.  
 (d) These items are or have been included in the corresponding items in the Revenue or Profit and Loss Account. Outstanding and accruing interest, dividends and rents must be shown after deduction of income-tax or the income-tax must be provided for amongst the liabilities on the other side of the balance-sheet.  
 (e) Such items as amount of liability in respect of bills discounted, uncalled capital of subsidiary companies, uncalled capital of other investments, etc., must either be shown in their several categories under the heading "Contingent Liabilities" or the appropriate items on the assets side must be set out in such detail as will clearly indicate the amount of the uncalled capital.  
 (f) As respects life and annuity business full particulars of holdings in and loans to subsidiary companies must be stated, giving the name of each company, the number and description of each class of shares held, the amounts paid up thereon and the value at which the holdings in each company stand in the balance-sheet.

*(The First Schedule)*

- (d) Whether this item must be shown net or the commission must be provided for amongst the liabilities on the other side of the balance-sheet.
- (e) The aggregate amount owing by a subsidiary company or subsidiary companies is to be shown separately from all other assets and the aggregate amount owing to a subsidiary company or subsidiary companies is to be shown separately from all other liabilities.
- (f) Amounts due from directors and officers must be shown separately.
- (g) No amounts must be entered under this heading unless fully secured. If not fully secured, the amounts must be included under the heading "Sundry Debtors".
- (h) Under this heading must be included such items as the following, which must be shown under separate headings suitably described: office furniture, goodwill, preliminary formation and organisation expenses, development expenditure account, discount on debentures issued, other expenditure carried forward to be written off in future years, balance being loss on Profit and Loss Appropriation Accounts, etc. The amounts included in the balance-sheet must not be in excess of cost.
- (i) Under the head "Other accounts, if any (to be specified)" on the left hand side, fines realised from the staff and their contribution towards the provident fund, if any, should be shown under separate sub-heads.
- (j) Where the insurer is required to maintain a separate account in respect of any sub-class of miscellaneous insurance business this heading is to be split up accordingly.]

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<sup>1</sup> This footnote was added by s. 69 of the Insurance (Amendment) Act, 1941 (18 of 1941).



(The First Schedule.)

## FORM AA.

Classified Summary of the <sup>1</sup>[Assets in India] of the.....  
 Company on 19 .

Class of Asset.	Book value as per (a) below.	Market value as per (b) below.	Remarks as per (c) below.
	Rs.	Rs.	
(1) Government of India Securities.			
(2) Indian Provincial Government Securities.			
(3) Indian Municipal Port and Improvement Trust Securities including Debentures.			
(4) Debentures of Indian Railways.			
(5) Guaranteed and Preference Shares of Indian Railways.			
(6) Annuities of Indian Railways.			
(7) Ordinary Shares of Railways in India.			
(8) Other Debentures of concerns in India.			
(9) Other Guaranteed and Preference Shares of concerns in India.			
(10) Other Ordinary Shares of concerns in India.			
(11) Loans on the Company's policies effected in India and within their surrender value.			
(12) Loans on Mortgage of property in India.			
(13) Loans on Personal Security to persons domiciled and resident in India.			

<sup>1</sup> These words were substituted for the words "Indian Assets" by s. 35 of the Insurance (Amendment) Act, 1939 (11 of 1939).

(The First Schedule.)

FORM AA—contd.

Class of Asset.	Book value as per (a) below.	Market value as per (b) below.	Remarks as per (c) below.
	Rs.	Rs.	
(14) Other loans granted in India (particulars to be stated).			
(15) Land and House property in India.			
(16) Cash on Deposit in Banks in India.			
(17) Cash in Hand and on current account in banks in India.			
(18) Agents' balances and outstanding premiums.			
(19) Interest, dividends and rents either outstanding or accrued but not due.			
(20) Other assets in India (to be specified).			

The statement shall show—

- the value for which credit is taken in the balance-sheet for each of the abovementioned classes of assets,
- the market value of such of the abovementioned classes of assets as has been ascertained from published quotations after deduction of accrued interest included in market prices in those cases where accrued interest is included elsewhere in the balance sheet,
- how the value of such of the abovementioned classes of assets as has not been ascertained from published quotations has been arrived at, and
- the rates of exchange at which the values of the assets other than in rupee currency have been converted into rupees.

The market values need not be shown separately where they are not less than the book values and a certificate to that effect is appended to the statement.

No amounts on account of any of the following items may be entered in the statement :—

- Goodwill.
- Preliminary, formation, organisation or development expenses.
- Commission or discount on shares or debentures issued.
- Commuted Commission.
- Expenditure carried forward to be written off in future years

(The Second Schedule.)

## THE SECOND SCHEDULE.

(See Section 11.)

*Regulations and Forms for the preparation of Profit and Loss Accounts.*

## PART I

*Regulations*

1. The items on the income side of the Profit and Loss Account and Profit and Loss Appropriation Account must relate to income whether actually received or not, and the items on the expenditure side must relate to expenditure whether actually paid or not.

2. Deductions from Interest, Dividends and Rents to be shown in respect of income-tax must include all amounts in respect of British Indian income-tax whether or not it has been or is to be deducted at source or paid direct.

3. The Interest, Dividends and Rents less income-tax thereon shown in the Revenue Accounts for any classes of business other than life insurance business, including annuity business may, if the insurer so desires, be included with the corresponding items in the Profit and Loss Account.

## PART II.

## FORMS

## FORM B.

*Form of Profit and Loss Account*

Profit and Loss Account of \_\_\_\_\_ for the year ended 19 ..

	Rs. A. P.		Rs. A. P.
British Indian Taxes on the Insurer's Profits (not applicable to any particular Fund or Account).		Interest, Dividends and Rents (not applicable to any particular Fund or Account) . . . . .	Rs.
		Less—Income-Tax thereon . . . . .	Rs.
Expenses of Management (not applicable to any particular Fund or Account)* . . . . .		Profit on realisation of Investments (not credited to Reserves or any particular Fund or Account) . . . . .	
Loss on Realisation of Investments (not charged to Reserves or any particular Fund or Account) . . . . .		Appreciation of Investments (not credited to Reserves or any particular Fund or Account) . . . . .	
Depreciation of Investments (not charged to Reserves or any particular Fund or Account) . . . . .		Profit transferred from Revenue Accounts (details to be given) . . . . .	
Loss transferred from Revenue Accounts (details to be given) . . . . .		Transfer Fees . . . . .	
Other Expenditure (to be specified) . . . . .		Other Income (to be specified) . . . . .	
Balance for the year carried to Appropriation Account . . . . .		Balance being loss for the year carried to appropriation Account . . . . .	

\*If any sum has been deducted from this item and entered on the assets side of the balance-sheet, the amount must be shown separately.

(The Second Schedule. The Third Schedule.)

## FORM C.

*Form of Profit and Loss Appropriation Account.*Profit and Loss Appropriation Account of \_\_\_\_\_ for the year  
ended 19 .

	Rs. A. P.		Rs. A. P.
Balance being loss brought forward from last year .		Balance brought forward from last year .	Rs.
Balance being loss for the year brought from Profit and Loss Account (as in Form B) .		Less—Dividends since paid in respect of last year (to be specified and if "free of tax" to be so stated)* .	Rs.
Dividends paid during the year on account of the current year (to be specified and if "free of tax" to be so stated) .			
Transfers to any particular Funds or Accounts (details to be given) .		Balance for the year brought from Profit and Loss Account (as in Form B) .	
Balance at end of the year as shown in the Balance-Sheet .		Balance being loss at end of the year as shown in the Balance-Sheet .	

\* NOTE.—This item may be shown on the other side of the account if preferred.

## THE THIRD SCHEDULE.

(See Section 11.)

*Regulations and Forms for the preparation of Revenue Accounts.*

## PART I.

*Regulations.*

1. Form D is, as set out in Part II of this Schedule, appropriate for life insurance business, but a separate revenue account must be prepared for every class <sup>1</sup>[or sub-class] of business in respect of which the insurer is required to maintain a separate account.

2. Form F is, as set out in Part II of this Schedule, appropriate for fire insurance business. A separate revenue account in the same form must be prepared for 2\* \* \* miscellaneous insurance <sup>1</sup>[exclusive of any sub-class of such business in respect of which the insurer is required to

<sup>1</sup>These words were inserted by s. 70 of the Insurance (Amendment) Act, 1941 (18 of 1941).

\* The words "accident and" were omitted by s. 19 of the Insurance (Amendment) Act, 1940 (20 of 1940).

*(The Third Schedule.)*

maintain a separate account] 1\* \* \* \* . Form E is, as set out in Part II of this Schedule, appropriate for marine insurance business.

2[For a sub-class of miscellaneous insurance in respect of which the insurer is required to maintain a separate account, Form D or Form F as set out in Part II of this Schedule may be used with such modifications as the Superintendent of Insurance may authorise.]

3. If any combined revenue account is for any purpose issued by an insurer it must be in accordance with the forms specified in this Schedule and must clearly show on the face thereof that it is a combined revenue account, and must set out fully the name of every insurer required to make separate returns under this Act whose revenue and expenditure have been included therein; if the revenue and expenditure of any person not being an insurer are included in a combined revenue account, the fact must be stated thereon.

4. The items on the income side of the revenue account must relate to income whether actually received or not, and the items on the expenditure side must relate to expenditure whether actually paid or not.

5. Re-insurance premiums, whether on business ceded or accepted, are to be brought into account gross (*i.e.*, before deducting commissions) under the head of premiums.

6. As respects life insurance business the following statements shall be furnished to the Superintendent of Insurance every year showing details provided for in a Form pertaining thereto —

- (A) A statement in form DD as set forth in Part II of this Schedule.
- (B) A statement in form DDD as set forth in Part II of this Schedule.
- (C) A statement in form DDDD as set forth in Part II of this Schedule.

7. The following information shall be supplied in addition to the revenue account, namely, the gross premium written in India for life, fire, marine and accident and miscellaneous insurance business.

8. Any office premises which form part of the assets of a life insurance fund must be treated as an interest earning investment, and accordingly, in the revenue account for life insurance business a fair rent for the premises must be included under the heading "Interest, Dividends and Rents" and in the revenue account for every class of business for which the premises are used proper charges for the use thereof must be included under the heading "Expenses of Management".

9. Where an insurer carries on the business of life insurance in conjunction with any other class of insurance business the expenses of management charged to the life insurance

<sup>1</sup> The words "including Workmen's Compensation and Motor Car Insurance" were omitted by s. 19 of the Insurance (Amendment) Act, 1940 (20 of 1940).

<sup>2</sup> These words and letters were added by s. 70 of the Insurance (Amendment) Act, 1941 (13 of 1941).

## (The Third Schedule.)

revenue account must not include more than a reasonable proportion of the common expenses and in particular, no such account must be charged with more than a fair sum for the use of any office premises having regard to the income from the various classes of business carried on and to the extent to which the premises are used for the purposes of each class of business.

10. Deductions from Interest, Dividends and Rents in respect of income-tax must include all income-tax charged on such income whether or not it has been or is to be deducted at source or paid direct; the income-tax to be shown as so deducted in the life insurance Revenue Account is British Indian, United Kingdom, Foreign and Dominion income-tax, but the income-tax to be shown as deducted in Revenue Accounts of any other classes of business is British Indian income-tax only.

## PART II.

## FORMS.

## FORM D.

*Form of Revenue Account applicable to Life Insurance Business*

Revenue Account of \_\_\_\_\_ for the year ended 19 \_\_\_\_  
in respect of \_\_\_\_\_ Business.

—	Business within India.	Business out of India. (a)	Total.	—	Business within India.	Business out of India. (a)	Total.
Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
Claims under Policies (including provision for claims due or intimated), less Re-insurances— By death . By maturity . Annuities, less Re-insurances. Surrenders (including Surrenders of Bonus), less Re-insurances. Bonuses in Cash, less Re-insurances. Bonuses in Reduction of premiums, less Re-insurances. ***** Expenses of Management(b)— *[1. (a) Commission to insurance agents (less that on Re-insurances) (b) Allowances and commission (other than commission included in sub-item (a) preceding)]				Balance of Fund at the beginning of the year Premiums, less Re-insurances— (i) First year premiums . (ii) Renewal premiums . (iii) Single premiums . Consideration for Annuities granted, less Re-insurances (c).  Interest, Dividends and Rents . Less—Income-tax thereon (d) Registration fees Other Income (to be specified) (e) . Loss transferred to Profit and Loss Account. Transferred from Appropriation Account .			

\* The entry "Commission to insurance agents (less that on re-insurances)" was omitted by s. 70 of the Insurance (Amendment) Act, 1941 (13 of 1941).

\* This entry was substituted for the entry "1. Allowances and Commission (other than commission to insurance agents)", *ibid.*

## (The Third Schedule.)

## FORM D—contd.

	Business within India.	Business out of India. (a)	Total.		Business within India.	Business out of India. (a)	Total.
	Rs.	Rs.	Rs.		Rs.	Rs.	Rs.
2. Salaries, etc. (other than to agents and those contained in item No. 1).							
3. Travelling expenses							
4. Directors' fees.							
5. Auditors' fees.							
6. Medical fees.							
7. Law charges.							
8. Advertisements							
9. Printing and Stationery							
10. Other expenses of management (accounts to be specified)							
11. Other payments (accounts to be specified).							
12. Rents for offices belonging to and occupied by the insurer							
13. Rents of other offices occupied by the insurer							
Bad Debts							
United Kingdom, British Indian, Dominion and Foreign Taxes							
Other Expenditure (to be specified)							
Profit transferred to Profit and Loss Account.							
Balance of Fund at the end of the year as shown in the Balance-sheet.							
Rs.				Rs.			

## NOTES.

(a) \* \* \* \* These columns apply only to business the premiums in respect of which are \* [ordinarily paid outside India].

<sup>1</sup> This entry was inserted by s. 70 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> The original entries numbered 6 to 12 were re-numbered 7 to 13, *ibid.*

<sup>3</sup> The words "In the case of an insurer having his head office in British India" were omitted, *ibid.*

<sup>4</sup> These words were substituted for the words "payable outside India" by s. 19 of the Insurance (Amendment) Act, 1940 (20 of 1940).

*(The Third Schedule.)*

<sup>1</sup>[ If any question arises whether any premiums are ordinarily paid outside India, the Superintendent of Insurance shall decide the question and his decision shall be final].

(b) If any sum has been deducted from this item and entered on the assets side of the balance-sheet, the amount so deducted must be shown separately. Under this item the salary paid to the managing agent or managing director shall be shown separately from the total amount paid as salaries to the remaining staff.

(c) All single premiums for annuities, whether immediate or deferred, must be included under this heading.

(d) British Indian, United Kingdom, Foreign and Dominion income-tax on Interest, Dividends and Rents must be shown under this heading, less any rebates of income-tax recovered from the revenue authorities in respect of expenses of management. The separate heading on the other side of the account is for United Kingdom, British Indian, Foreign and Dominions taxes, other than those shown under this item.

(e) Under the head "Other Income" fines, if any, realised from the staff must be shown separately. All the amounts received by the insurer directly or indirectly whether from his head office or from any other source outside\*\* India shall also be shown separately in the revenue account except such sums as properly appertain to the capital account.

(f) In the case of an insurer having his principal place of business outside British India the expenses of management for business out of India and total business need not be split up into the several sub-heads, if they are not so split up in his own country.

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<sup>1</sup> These words were added, by s. 19 of the Insurance (Amendment) Act, 1940 (20 of 1940).

\*\* The word "British" was omitted by s. 36 of the Insurance (Amendment) Act, 1939 (11 of 1939).



## (The Third Schedule.)

FORM DD.  
Company, for the year ending 19 .

## Classified statement of life insurance policies of the

	New life insurance business in respect of which a premium has been paid in the year.					Total life insurance business in force at end of the year.		Premium income for which credit has been taken in the revenue account.
	Number of policies.	Sums insured and annuities per annum.	Single premiums (including consideration for immediate (or deferred) annuities and all other premiums paid at the outset where no subsequent premium is payable).	Yearly renewal premium income.	Number of policies.	Sums insured with bonuses and annuities per annum.		
		Rs.	Rs.	Rs.			Rs.	
<i>Ordinary policies.</i>								
In India	.	.	.	.	.	.	.	
Out of India	.	.	.	.	.	.	.	
Total	.							
<i>Annuity contracts, etc.</i>								
In India	.	.	.	.	.	.	.	
Out of India	.	.	.	.	.	.	.	
Total	.							
<i>Group insurance policies.</i>								
In India	.	.	.	.	.	.	.	
Out of India	.	.	.	.	.	.	.	
Total	.							

The amounts should be stated to the nearest rupees and after deduction of re-insurances.  
 \* These words were inserted by s.36 of the Insurance (Amendment) Act, 1939 (11 of 1939).

(The Third Schedule.)

## FORM DDD.

Additions to and Deductions from policies of the  
Company for the year ending 19 .

	Ordinary life insurance policies insuring money to be paid on death or survivorship			Annuities.	
	No.	Sum assured.	Reversionary bonus additions.	No.	Annuity per annum.
		Rs.	Rs.		Rs.
(1) Policies at beginning of year .					
(2) New policies issued .					
(3) Old policies revived .					
(4) Old policies changed and increased .					
(5) Bonus additions allotted .					
Total .					
Discontinued during year—					
(6) By death .					
(7) By survivorship or the happening of the contingencies insured against other than death .					
(8) By expiry of term under temporary insurances .					
(9) By surrender of policy .					
(10) By surrender of bonus .					
(11) By forfeiture or lapse .					
(12) By change and decrease .					
(13) By being not taken up .					
Total discontinued .					
Total existing at end of year .					

<sup>1</sup>[A separate statement must be given in respect of each class of life insurance business for which a separate revenue account is submitted.

Insurers having their principal place of business in British India shall give the information required in the form separately for business transacted in India and business transacted outside India and insurers having their principal place of business outside British India will furnish information regarding business transacted in India only.]

<sup>2</sup> These notes were added by s. 36 of the Insurance (Amendment) Act, 1939 (11 of 1939).

## (The Third Schedule.)

## FORM DDDD.

*Particulars of the policies forfeited or lapsed in the last 1\* year under review, less those 2[revived] and reinstated for full benefits, classified according to the year in which they were issued.*

1* Year in which the policies were issued.	Number of policies forfeited or lapsed.	Sum insured under policies forfeited or lapsed
Year ending 19    , being the year under review. Year ending 19    , being the year previous to that under review.		Rs

And so on, the number of and sum insured under policies forfeited or lapsed in the last 1\* year under review being stated after classification according to each of the preceding years in which they were issued

A separate statement must be given in respect of each class of life insurance business for which a separate revenue account is submitted.

Insurers having their principal place of business in British India shall give the information required in the form separately for business transacted in India and business transacted outside India and insurers having their principal place of business outside British India will furnish information regarding business transacted in India only.

<sup>1</sup> The word "financial" was omitted by s. 36 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>2</sup> This word was substituted for the word "revised", *ibid*

## (The Third Schedule.)

## FORM E.

Form of Revenue Account applicable to Marine Insurance Business.

Revenue Account of \_\_\_\_\_ for the year ended 19 ,  
in respect of Marine Insurance Business.

	Current year.	Last preceding year.	Previous years.	Total.		Current year.	Last preceding year.	Previous years.	Total.
	Rs.	Rs.	Rs.	Rs.		Rs.	Rs.	Rs.	Rs.
*Claims paid (less Salvages and Re-insurances) (a) (c) .					Balance of Marine Insurance Business Account at beginning of the year :				
*Commission .					Balances				
*Expenses of Management (b) .					Additional Reserve (if any)				
*Bad Debts .					*Premiums (less Returns, Re-insurances, Brokerages and Discount) (c)				
*United Kingdom, British Indian, Dominion and Foreign Taxes					Interest, Dividends and Rents. Rs.				
*Other Expenditure (to be specified)					Less—Income-tax thereon. Rs.				
Profit transferred to Profit and Loss Account .					*Other Income (to be specified) (d)				
Balance of Marine Insurance Business Account at end of year as shown in the Balance Sheet : Balances .					Loss transferred to Profit and Loss Account				
Additional Reserve (if any) .					Transferred from Appropriation Account.				

## NOTES.

(a) This heading must include all expenses directly incurred in settling claims.

(b) If any sum has been deducted from this item and entered on the assets side of the balance-sheet the amount so deducted must be shown separately.

(c) Where the account is furnished under the provisions of section 11 of the Insurance Act, 1938, separate figures for claims paid to claimants in <sup>1\*</sup> India and claimants outside <sup>1\*</sup> India, and for premiums derived from business effected in <sup>1\*</sup> India and effected outside <sup>1\*</sup> India must be given.(d) All the amounts received by the insurer directly or indirectly whether from his head office or from any other source outside <sup>1\*</sup> India shall also be shown separately in the revenue account except such sums as properly appertain to the capital account.\* Where the account is furnished under the provisions of clause (b) of subsection (2) of section 16 of the Insurance Act, 1938, by an insurer to whom that section applies, separate figures for business within <sup>1\*</sup> India and business out of <sup>1\*</sup> India must be given against the items marked with an asterisk. Against all other items the total amount for the business as a whole may be given.<sup>1</sup> The word "British" was omitted by s. 36 of the Insurance (Amendment) Act, 1939 (11 of 1939).

## (The Third Schedule.)

## FORM F.

Form of Revenue Account applicable to Fire Insurance Business and to 1\* \* Miscellaneous Insurance Business.  
2\* \* \* \*

Revenue Account of for the year ended 19 ,  
in respect of Business

	Rs.		Rs.
*Claims under Policies, less Re-insurances (a) (d) :		Balance of Account at beginning of the year:	
Paid during the year . . . . . Rs.		Reserve for Unexpired Risks . . . . . Rs.	
Total estimated liability in respect of outstanding claims at end of the year whether due or intimated . . . . . Rs.		Additional Reserve (if any) . . . . . Rs.	
Total		*Premiums, less Re-insurances (d)	
Less—Outstanding at end of previous year (b) . . . . . Rs.		Interest, Dividends and Rents . . . . . Rs.	
*Commission . . . . .		Less—Income-tax thereon . . . . . Rs.	
*Expenses of Management (c) . . . . .		*Other Income (to be specified) (e) . . . . .	
*Bad Debts . . . . .		Loss transferred to Profit and Loss Account . . . . .	
United Kingdom, Foreign and Dominion Taxes . . . . .		Transferred from Appropriation Account . . . . .	
*Other Expenditure (to be specified) . . . . .			
Profit transferred to Profit and Loss Account . . . . .			
Balance of Account at the end of the year as shown in the Balance-Sheet :			
Reserve for Unexpired Risks, being per cent. of premium income of year . . . . . Rs.			
Additional Reserve (if any) . . . . . Rs.			
	Rs.		Rs.

## NOTES.

(a) This heading must include all expenses directly incurred in settling claims.

(b) If in any year the claims actually paid and those still unpaid at the end of that year in respect of the previous year or years are in excess of the amount included in the previous year's Revenue Account as provision for outstanding claims, then the amount of such excess must be shown in the Revenue Account.

(c) If any sum has been deducted from this item and entered on the assets side of the balance-sheet the amount so deducted must be shown separately.

(d) Where the account is furnished under the provisions of section 11 of the Insurance Act, 1938, separate figures for claims paid to claimants in \*\*India and claimants outside \*\*India, and for premiums derived from business effected in \*\*India and effected outside \*\*India must be given.

(e) All the amounts received by the insurer directly or indirectly whether from his head office or from any other source outside \* \* India shall also be shown separately in the revenue account except such sums as properly appertain to the capital account.

\* Where the account is furnished under the provisions of clause (b) of sub-section (2) of section 16 of the Insurance Act, 1938 by an insurer to whom that section applies, separate figures for business within \* \* India and business out of \* \* India must be given against the items marked with an asterisk. Against all other items the total amount for the business as a whole may be given.

<sup>1</sup> The words "Accident and" were omitted by s. 19 of the Insurance (Amendment) Act, 1940 (20 of 1940).

<sup>2</sup> The words "including Workmen's Compensation and Motor Car Insurance Business" were omitted, *ibid*.

<sup>3</sup> The word "British" was omitted by s. 36 of the Insurance (Amendment) Act, 1939 (11 of 1939).

*(The Fourth Schedule.)*

## THE FOURTH SCHEDULE.

*(See Section 13.)*

*Regulations for the preparation of Abstracts of Actuaries' Reports and Requirements applicable to such Abstracts*

## PART I.

*Regulations.*

1. Abstracts and Statements must be so arranged that the numbers and letters of the paragraphs correspond with those of the paragraphs of Part II of this Schedule.

2. In showing the proportion which that part of the annual premiums reserved as a provision for future expenses and profits bears to the total of the annual premiums, in accordance with the requirements of <sup>1</sup>[paragraph 4] of Part II of this Schedule, no credit is to be taken for any adjustments made in order to secure that no policy is treated as an asset.

3. (1) The average rate of interest yielded in any year by the assets constituting a life insurance fund shall, for the purposes of <sup>2</sup>[paragraph 5] of Part II of this Schedule, be calculated by dividing the interest of the year by the mean fund of the year; and for the purposes of any such calculation the interest of the year shall be taken to be the whole of the interest credited to the life insurance fund during the year after deduction of income-tax charged thereon (any refund of income-tax in respect of expenses of management made during the year being taken into account), and the mean fund of the year shall be ascertained by adding a sum equal to one-half of the amount of the life insurance fund at the beginning of the year to a sum equal to one-half of that fund at the end of the year, and deductions from the aggregate of those two sums an amount equal to one-half of the interest of the year.

(2) For the purposes of the calculation aforesaid either—

- (a) all profits and income arising during the year from sums invested in reversions shall be included in the interest credited to the life insurance fund during the year; or
- (b) such portion of the life insurance fund as is invested in the purchase of reversions, and the profits and income arising therefrom, shall be excluded from the calculation; but in that case a statement must be added to the information required under the said

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<sup>1</sup> This word and figure were substituted for the word and figure "paragraph 3" by s. 37 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>2</sup> This word and figure were substituted for the word and figure "paragraph 4", *ibid.*

*(The Fourth Schedule.)*

1[paragraph 5], showing in respect of the portion of the fund so excluded as aforesaid, the average rate of annual profit and income for which credit has been taken during the five years last preceding the valuation date, and explaining the manner in which the said average rate has been calculated.

(3) The information given in accordance with the requirements of the said 1[paragraph 5] shall show clearly by which of the methods hereinbefore in this regulation mentioned the sums invested in reversions and the profits and income arising therefrom have been dealt with.

4. Every abstract prepared in accordance with the requirements of Part II of this Schedule shall be signed by an actuary and shall contain a certificate by him to the effect that he has satisfied himself as to the accuracy of the valuations made for the purposes thereof and of the valuation data :

Provided that in the case of an abstract prepared on behalf of 2[an insurer], if the actuary who signs the abstract is not a permanent officer of 3[the insurer] the certificate as to the accuracy of the valuation data shall be given and signed by the principal officer of 3[the insurer] and the actuary shall include in the abstract a statement signed by him showing what precautions he has taken to ensure the accuracy of the data..

5. For the purposes of the Schedule the following expressions have the meanings hereby respectively assigned to them, namely :—

“extra premium” means a charge for any risk not provided for in the minimum contract premium ;

“inter valuation period” means, as respects any valuation, the period to the valuation date of that valuation from the valuation date of the last preceding valuation in connection with which an abstract was prepared under this Act or under the enactments repealed by this Act, or, in a case where no such valuation has been made in respect of the class of business in question, from the date on which the insurer began to carry on that class of business ;

“maturity date” means the fixed date on which any benefit will become payable either absolutely or contingently ;

“net premiums” means as respects any valuation the premiums taken credit for in the valuation ;

“premium term” means the period during which premiums are payable ;

“valuation date” means as respects any valuation the date as at which the valuation is made

<sup>1</sup> This word and figure were substituted for the word and figure “ paragraph 4 ” by s. 37 of the Insurance (Amendment) Act, 1939 (11 of 1939).

<sup>2</sup> These words were substituted for the words “ an insurance company ”, *ibid.*

<sup>3</sup> These words were substituted for the words “ the company ”, *ibid.*

## (The Fourth Schedule.)

## PART II

*Requirements applicable to an Abstract in respect of Life Insurance Business.*

The following tabular statements shall be annexed to every abstract prepared in accordance with the requirements of this Part of this Schedule, namely:—

- (a) a Consolidated Revenue Account, in the Form G annexed to this Part of this Schedule, for the interval-valuation period (except that it shall not be necessary to prepare such an account in respect of any class of business so long as the insurer deposits annually with the Superintendent of Insurance an abstract in respect of that class of business); and
- (b) a Summary and Valuation in the Form H annexed to this Part of this Schedule of the policies included at the valuation date in the class of business to which the abstract relates; and
- (c) a Valuation Balance Sheet in the Form I annexed to this Part of this Schedule; and
- (d) a statement in Form DDD as set forth in Part II of the Third Schedule of the additions to and deductions from the number of policies and the sums insured thereunder for each class of life insurance <sup>1</sup>[for the interval-valuation period (except that it shall not be necessary to prepare such statement in respect of any class of business so long as the insurer deposits annually with the Superintendent of Insurance an abstract in respect of that class of business)].

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and every such abstract shall show—

1. The valuation date.
2. The general principles and full details of the methods adopted in the valuation of each of the various classes of insurances and annuities shown in the said Form H, including statements on the following points:—

- (a) whether the principles were determined by the instruments constituting the company or by its regulations or bye-laws or how otherwise;
- (b) the method by which the net premiums have been arrived at and how the ages at entry, premium terms and maturity dates have been treated for the purpose of the valuation;
- (c) the methods by which the valuation age, period from the valuation date to the maturity date, and the future premium terms, have been treated for the purpose of the valuation;
- (d) the rate of bonus taken into account where by the method of valuation definite provision is made for the maintenance of a specific rate of bonus;

<sup>1</sup> These words were substituted for the word “; and” by s. 71 of the Insurance (Amendment) Act, 1941 (13 of 1941).

\* Clause (e) was omitted, *ibid.*



*(The Fourth Schedule.)*

(e) the method of allowing for—

- (i) the incidence of the premium income; and
- (ii) premiums payable otherwise than annually;

(f) the methods by which provision has been made for the following matters, namely:—

- (i) the immediate payment of claims;
- (ii) future expenses and profits in the case of limited payment and paid-up policies;
- (iii) the reserve in respect of lapsed policies, not included in the valuation, but under which a liability exists or may arise; and whether any reserves have been made for the matters aforesaid;

(g) whether under the valuation method adopted any policy would be treated as an asset, and, if so, what steps, if any, have been taken to eliminate such asset;

(h) a statement of the manner in which policies on under-average lives and policies subject to premiums which include a charge for climatic, military or other extra risks have been dealt with; and

(i) the rates of exchange at which liabilities in respect of policies issued in foreign currencies have been converted into rupees and what provision has been made for possible increase of liability arising from future variations in the rates of exchange

3. The table of mortality used, and the rate of interest assumed, in the valuation.

4. The proportion which that part of the annual premiums reserved as a provision for future expenses and profits bears to the total of the annual premiums, separately specified in respect of insurances with immediate profits, with deferred profits, with profits under discounted bonus systems, and without profits.

5. The average rates of interest yielded by the assets, whether invested or uninvested, constituting the life insurance fund for each of the years covered by the valuation date.

6. The basis adopted in the distribution of profits as between the insurer and policy-holders, and whether such basis was determined by the instruments constituting the company, or by its regulations or bye-laws, or how otherwise.

7. The general principles adopted in the distribution of profits among policy-holders, including statements on the following points, namely:—

(a) whether the principles were determined by the instruments constituting the company or by its regulations or bye-laws, or how otherwise;

(b) the number of years' premiums to be paid, period to elapse and other conditions to be fulfilled before a bonus is allotted;

(c) whether the bonus is allotted in respect of each year's premium paid, or in respect of each completed calendar year or year of assurance or how otherwise; and

(d) whether the bonus vests immediately on allocation, or, if not, the conditions of vesting.

## (The Fourth Schedule)

8. (1) The total amount of profits arising during the inter-valuation period, including profits paid away and sums transferred to reserve funds or other accounts during that period, and the amount brought forward from the preceding valuation (to be stated separately) and the allocation of such profits—

- (a) to interim bonus paid;
- (b) among policy-holders with immediate participation, giving the number of the policies which participated, and the sums assured thereunder (excluding bonuses);
- (c) among policy-holders with deferred participation, giving the number of the policies which participated and the sums assured thereunder (excluding bonuses);
- (d) among policy-holders in the discounted bonus class, giving the number of the policies which participated, and the sums assured thereunder (excluding bonuses);
- (e) to the insurer or, in the case of an insurance company, among shareholders or to shareholders' accounts (any such sums passed through the accounts during the inter-valuation period to be separately stated);
- (f) to every reserve fund or other fund or account (any such sums passed through the accounts during the inter-valuation period to be separately stated);
- (g) as carried forward unappropriated.

(2) Specimens of bonuses allotted [as a result of this valuation] to policies for one thousand rupees—

- (a) for the whole term of life effected at the respective ages of 20, 30 and 40, and having been in force respectively for five years, ten years and upwards at intervals of ten years; and
- (b) for endowment insurances effected at the respective ages of 20, 30 and 40, for endowment terms of fifteen, twenty and thirty years, and having been in force respectively for five years, ten years and upwards at intervals of ten years;

together with the amounts apportioned under the various manners in which the bonus is receivable.

9. A statement in Form J annexed to this Part of this Schedule of specimen policy reserve values held or required to be held according to the methods adopted in the valuation, and specimen minimum surrender values in respect of whole life insurance policies for Rs. 1,000 with premiums payable throughout life effected at the respective ages of 20, 30, 40 and 50, and immediately on payment of the first, second, third, fourth, 2[fifth,] sixth, seventh, eighth, ninth, tenth, fifteenth and twentieth annual premium; with similar specimen policy reserve values and specimen surrender values in respect of whole life insurance policies subject to premiums payable for 20 years and of endowment insurance policies maturing at age 55

10. A statement showing how the liability under any disability clause in a policy has been determined in the valuation with full information of the tables of sickness or accident used for the purpose.

<sup>1</sup> These words were substituted for the words "as at the valuation date" by s. 71 of the Insurance (Amendment) Act, 1941 (13 of 1941).

\* This word was inserted, *ibid.*

## (The Fourth Schedule.)

## 1[FORM G.]

Consolidated Revenue Account of \_\_\_\_\_ for \_\_\_\_\_ years  
 Commencing \_\_\_\_\_ and ending \_\_\_\_\_

	Business within India, (a).	Total.		Business within India, (a).	Total.
	Rs.	Rs.		Rs.	Rs.
Claims under Policies (including provision for claims due or in- timated), less Re- insurances—			Balance of Life Insur- ance Fund at the beginning of the period.		
By death . . . . .			Premiums, less Re- insurances—		
By maturity . . . . .			(i) First year premi- ums.		
Annuities, less Re-in- surances.			(ii) Renewal premi- ums		
Surrenders (including surrenders of Bonus), less Re-insurances.			(iii) Single premiums.		
Bonuses in cash, less Re- insurances.			Consideration for An- nuities granted, less Re-insurances (c).		
Bonuses in Reduction of Premiums, less Re- insurances.			Interest, Dividends and Rents . . . . .		
Expenses of Manage- ment (b) (e)—			Less — Income-tax thereon (d). . . . .		
1. (a) Commission to insurance agents (less that on Re-in- surances).			Registration fees . . .		
(b) Allowances and Commission (other than commission included in sub- item (a) preceding).			Other Income (to be specified).		
2. Salaries, etc. (other than to agents and those contained in sub-item 1 (b) pre- ceding).			Loss transferred to Profit and Loss Account.		
3. Travelling expenses			Transferred from Ap- propriation Account.		
4. Directors' fees . . .					
5. Auditors' fees . . .					
6. Medical fees . . . .					
7. Law charges . . . .					
8. Advertisements . . .					
9. Printing and Sta- tionery . . . . .					
10. Other expenses of management (accounts to be specified).					

<sup>1</sup> This Form was substituted for the original Form G by s. 71 of the In-  
 surance (Amendment) Act, 1941 (13 of 1941).

(The Fourth Schedule.)

## FORM G—contd.

	Business within India. (a).	Total.		Business within India. (a).	Total.
	Rs.	Rs.		Rs.	Rs.
11. Other payments (accounts to be specified).					
12. Rent for offices belonging to and occupied by the insurer.					
13. Rents of other offices occupied by the insurer.					
Bad debts					
United Kingdom, British Indian, Domi- nion and Foreign Taxes.					
Other Expenditure (to be specified).					
Profit transferred to Profit and Loss Account.					
Balance of Life In- surance Fund at end of the period as shown in the Balance-sheet.					
Rs.			Rs.		

## NOTES.

(a) These columns apply to all business except business the premiums in respect of which are ordinarily paid outside India. If any question arises whether any premiums are ordinarily paid inside or outside India, the Superintendent of Insurance shall decide the question and his decision shall be final.

(b) If any sum has been deducted from this item and entered on the assets side of the balance-sheet, the amount so deducted must be shown separately.

(c) All single premiums for annuities, whether immediate or deferred, must be included under this heading.

(d) British Indian, United Kingdom, Foreign and Dominion income-tax on Interest, Dividends and Rents must be shown under this heading, less any rebates of income-tax recovered from the revenue authorities in respect of expenses of management. The separate heading on the other side of the account is for United Kingdom, British Indian, Foreign and Dominion taxes, other than those shown under this item.

(e) In the case of an insurer having his principal place of business outside British India the expenses of management for the total business need not be split up into the several sub-heads, if they are not so split up in his own country.

(The Fourth Schedule.)

FORM H.

## Summary and valuation of the Policies of 19 .

as at

[illegible]

(The Fourth Schedule.)

FORM H—contd.

Description of Transactions.	Particulars of the Policies for Valuation.					Valuation.			
	Number of policies.	Sums Assured.	Bonuses.	Office yearly premiums.	Net yearly premiums.	Sums Assured and Bonuses	Office yearly premiums.	Net yearly premiums.	Net Liabilities.
<b>DIVISION II.</b>									
<i>Annuities on Lives.</i>									
Immediate Annuities . . . . .									
Deferred Annuities with return of premiums . . . . .									
Deferred Annuities without return of premiums . . . . .									
Other classes (to be specified) . . . . .									
Total Annuities . . . . .									
Deduct—Re-insurances . . . . .									
Net Annuities on Lives . . . . .									
Total of the results (after deduction of Re-insurances) . . . . .									

## NOTES.

1. Items in this Summary are to be stated to the nearest rupee.
2. No policy of insurance upon the lives of a group of persons, whereby sums assured are payable in respect of the several persons included in the group, is to be included in Groups A, B, C, or D of this Form: any such policies must be shown in a separate Group which must be added to the Form.
3. If policies without participation in profits but with a guaranteed rate of bonus are issued, they must be separately specified in Group D of this Form.
4. Policies under which there is a waiver of premium during disability must be shown as a separate class.
5. Separate forms must be prepared in respect of classes of policies valued by different tables of mortality or at different rates of interest or involving the valuation of net premiums on different bases.
6. In cases where separate valuations of any portion of the business are required under local laws in places outside British India and reserves based on such valuations are deposited in such places, a statement must be furnished in respect of the business so valued in each such place showing the total number of policies, the total sums assured and bonuses, the total office yearly premiums, and the total net liability on the bases as to mortality and interest adopted in each such place with a statement as to such bases respectively.
7. Office and net premiums and the values thereof must be shown after deduction of abatements made by the application of bonus.

## FORM I.

Valuation Balance-Sheet of

as at

19 .

	Rs.		Rs.
Net liability under business as shown in the Summary and Valuation of Policies . . . . .		Balance of Life Insurance Fund as shown in the Balance-Sheet . . . . .	
Surplus, if any . . . . .		Deficiency, if any . . . . .	

NOTE.—If the proportion of surplus allocated to the insurer, or in the case of an insurance company to shareholders, is not uniform in respect of all classes of insurances, the surplus must be shown separately for the classes to which the different proportions relate.

(The Fourth Schedule.)

## FORM J.

policy for Rs. 1,000.

Specimen policy reserve values and minimum surrender values under a

	Age at entry 20.		Age at entry 30.		Age at entry 40.		Age at entry 50.	
	Reserve value.	Minimum surrender value.	Reserve value.	Minimum surrender value.	Reserve value.	Minimum surrender value.	Reserve value.	Minimum surrender value.
1. [Number of annual premiums paid up to the valuation date.]								
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
15.								
20.								

NOTE.—Items in this Form to be stated to the nearest rupee.

<sup>2</sup> [NOTE.—The reserve value is to be based on the rate of office premium payable by an insured who entered at the age shown and who had, by the valuation date, paid the number of annual premiums shown in the first column.]

<sup>1</sup> These words were substituted for the words "Number of premiums paid" by s. 71 of the Insurance (Amendment) Act, 1941 (13 of 1941).

<sup>2</sup> This Note was added, *ibid.*

(The Fifth Schedule.)

## THE FIFTH SCHEDULE.

(See Section 13.)

*Regulations for preparing statements of business in force and requirements applicable to such statements*

### PART I.

#### *Regulations.*

1. Statements prepared under this Schedule must be prepared, so far as practicable, in tabular form and must be identified by numbers and letters corresponding with those of the paragraphs of Part II of this Schedule.

2. Except with respect to rates of premium or contribution, items in statements prepared under this Schedule are to be shown to the nearest rupee.

3. Extra premium shown in the forms of Summary and Valuation prepared under the Fourth Schedule to this Act must not be included in statements prepared under this Schedule.

4. Every statement prepared under this Schedule shall be signed by the actuary making the investigation in connection with which it is prepared.

5. For the purposes of this Schedule the following expressions have the meanings hereby respectively assigned to them, namely:—

- (a) “annual loading” means the provision made for future expenses and profits;
- (b) “extra premiums” means a charge for any risk not provided for in the minimum contract premium;
- (c) “net premiums” means the premiums taken credit for in the valuation in connection with which any statement is prepared; and
- (d) “valuation date” means as respects any valuation the date as at which the valuation is made.

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### PART II.

#### *Requirements for statements applicable to Life Insurance Business.*

The statements required to be prepared under this Part of this Schedule are as follows, namely:—

1. Statements, separately prepared in respect of policies with and without participation in profits, showing—

- (a) as respects policies for the whole term of life, the rates of office premiums charged, in accordance with the published tables in use, for new policies giving the rates for decennial ages at entry from 20 to 70 inclusive; and



*(The Fifth Schedule.)*

- (b) as respects endowment insurance policies, the rates of office premiums charged, in accordance with the published tables in use, for new policies with original terms of ten, fifteen, twenty, thirty and forty years, giving the rates for decennial ages at entry from 20 to 40 inclusive, but excluding policies under which the age at maturity exceeds 60.

2. Statements, separately prepared in respect of policies with immediate profits, with deferred profits, with profits under discounted bonus systems, and without profits, showing in quinquennial groups—

- (a) as respects policies for the whole term of life—

- (i) the total amount assured (specifying sums assured and reversionary bonuses separately) grouped according to ages attained;
- (ii) the amount per annum, after deducting abatements made by application of bonus, of office premiums payable throughout life, and of the corresponding net premiums, grouped according to ages attained; and
- (iii) the amount per annum, after deducting abatements made by application of bonus, of office premiums payable for a limited number of years; and, either, the corresponding net premiums grouped in accordance with the grouping adopted for the purposes of the valuation, or, the annual loading reserved for the remaining duration of the policies, grouped according to ages attained;

- (b) as respects endowment insurance policies—

- (i) the total amount assured (specifying sums assured and reversionary bonuses separately), grouped in accordance with the grouping adopted for the purposes of the valuation; and
- (ii) the amount per annum, after deducting abatements made by application of bonus, of office premiums payable, and of the corresponding net premiums, grouped in accordance with the grouping adopted for the purposes of the valuation:

Provided that—

- (a) as respects endowment insurance policies which will reach maturity in less than five years, the information required by sub-paragraph (b) (i) of this paragraph must be given for each year instead of in quinquennial groups; and
- (b) where the office premiums payable under policies for the whole term of life for a limited number of years, or the office premiums payable under endowment insurance policies, or the corresponding net premiums, are grouped for the purposes of the valuation otherwise than according to the number of years' payments remaining to be made, or, where the sums assured under endowment insurance policies are grouped for

(The Fifth Schedule. The Sixth Schedule.)

the purposes of the valuation otherwise than according to the years in which the policies will mature for payment or in which they are assumed to mature if earlier than the true year, then, in any such case the valuation constants and an explanation of the method by which they are calculated must be given for each group, and in the case of the sums assured under endowment insurance policies a statement must also be given of the amount assured maturing for payment in each of the two years following the valuation date.

3. Statements as respects any policies in force under which premiums cease to be payable, whether permanently or temporarily, during disability arising from sickness or accident, showing the total amount of the office premiums payable.

4. Statements as respects immediate annuities on single lives for the whole term of life, separately prepared in respect of annuities on male and female lives, showing in quinquennial age groups the total amount of such annuities.

5. Statements as respects deferred annuities, separately prepared in respect of annuities on male and female lives, showing the specimen reserve values for annuities of one hundred rupees which will be produced on maturity on the basis of valuation adopted at ages, in the case of male lives, 60 and 65, and in the case of female lives, 55 and 60; the said statements must show the specimen reserve values which will be produced under the table of annual premiums in use for new policies, and if under any other table of annual premiums in use for any other deferred annuity policies in force smaller reserve values will be produced, the like specimens of these must also be given.

6. Statements as respects any policies of insurance upon the lives of a group of persons, whereby sums assured are payable in respect of the several persons included in the group, showing the total claims paid since the date as at which the last statements were prepared under this Part of this Schedule or, where no such statements have been prepared, since the date on which the insurer began to carry on the class of business to which the statements relate, and the reserve for unexpired risks and outstanding claims

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#### THE SIXTH SCHEDULE.

(See section 55.)

*Rule as to the valuation of the Liabilities of an insurer in Insolvency or Liquidation.*

The liabilities of an insurer in respect of current contracts effected in the course of life insurance business including annuity business, shall be calculated by the method and

*(The Sixth Schedule.)*

upon the basis to be determined by an actuary approved by the Court, and the actuary so approved shall, in determining as aforesaid, take into account—

- (a) the purpose for which such valuation is to be made,
- (b) the rate of interest and the rates of mortality and sickness to be used in valuation, and
- (c) any special directions which may be given by the Court.

The liabilities of an insurer in respect of current policies other than life policies shall be such portion of the last premium paid as is proportionate to the unexpired portion of the policy in respect of which the premium was paid.

## THE MANŒUVRES, FIELD FIRING AND ARTILLERY PRACTICE ACT, 1938.

ACT No. V OF 1938.<sup>1</sup>

[12th March, 1938.]

An Act to provide facilities for Military manœuvres and for field firing and artillery practice.

WHEREAS it is expedient to provide facilities for military manœuvres and for field firing and artillery practice; It is hereby enacted as follows:—

1. (1) This Act may be called the Manœuvres, Field Firing and Artillery Practice Act, 1938. Short title and extent.

(2) It extends to the whole of British India.

### CHAPTER I.

#### MANŒUVRES.

2. (1) The Provincial Government may, by notification in the local official Gazette, authorise the execution of military manœuvres over any area specified in the notification during a specified period not exceeding three months: Power of Provincial Government to authorise manœuvres.

Provided that the same area or any part thereof shall not ordinarily be so specified more than once in any period of three years.

(2) The Provincial Government shall publish notice of its intention to issue a notification under subsection (1) as early as possible in advance of the issue of the notification, and no such notification shall be issued until the expiry of three months from the date of the first publication of such notice in the local official Gazette.

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<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1936, Pt. V, p. 326; for Report of the Select Committee, see *ibid.*, 1937, Pt. V, p. 272.

This Act has been applied to British Baluchistan, see Notification No. 231-F., dated the 15th September, 1938, Gazette of India, 1938, Part I, page 1557.

(3) The notice required by sub-section (2) shall be given by publication in the local official Gazette and shall also be given throughout the area which it is proposed to specify in the notification by publication in the manner prescribed by rules made under section 13, and shall be repeated by like publication one month and one week as nearly as may be before the commencement of the manœuvres.

Powers exer-  
cisable for  
purposes of  
manœuvres.

3. (1) Where a notification under sub-section (1) of section 2 has been issued, such persons as are included in the military forces engaged in the manœuvres may, within the specified limits and during the specified periods,—

(a) pass over, or encamp, construct military works of a temporary character, or execute military manœuvres on, the area specified in the notification, and

(b) supply themselves with water from any source of water in such area:

Provided that nothing herein contained shall authorise the taking of water from any source of supply, whether belonging to a private owner or a public authority, of an amount in excess of the reasonable requirements of the military forces or of such amount as to curtail the supply ordinarily required by those entitled to the use of such water supply.

(2) The provisions of sub-section (1) shall not authorise entry on or interference with any well or tank held sacred by any religious community or any place of worship or ground attached thereto except for the legitimate purpose of offering prayers or any place or building reserved or used for the disposal of the dead, or any dwelling house or premises attached thereto or any educational institution, factory, workshop or store or any premises used for the carrying on of any trade, business or manufacture or any garden or pleasure ground, or any ancient monument as defined in section 2 of the Ancient Monuments Preservation Act, 1904. VII of 1904.

Duty of Officer  
Commanding  
to repair  
damage.

4. The Officer in Command of the military forces engaged in the manœuvres shall cause all lands used under the powers conferred by this Chapter to be restored, as soon and as far as practicable, to their previous condition.

5. Where a notification issued under section 2 authorises the execution of military manœuvres compensation shall be payable from the Defence Estimates for any damage to person or property or interference with rights or privileges arising from such manœuvres including expenses reasonably incurred in protecting person, property, rights and privileges.

Right to compensation for damage caused by manœuvres.

6. (1) The Collector of the district in which any area utilised for the purpose of manœuvres is situated shall depute one or more Revenue Officers to accompany the forces engaged in the manœuvres for the purpose of determining the amount of any compensation payable under section 5.

Method of assessing compensation.

(2) The Revenue Officer shall consider all claims for compensation under section 5 and determine, on local investigation and where possible after hearing the claimant, the amount of compensation, if any, which shall be awarded in each case; and shall disburse on the spot to the claimant the compensation so determined as payable.

(3) Any claimant, dissatisfied with a refusal of the Revenue Officer to award him compensation or with the amount of compensation awarded to him by the Revenue Officer, may, at any time within fifteen days from the communication to him of the decision of the Revenue Officer, give notice to the Revenue Officer of his intention to appeal against the decision.

(4) Where any such notice has been given, the Collector of the district shall constitute a commission consisting of himself as chairman, a person nominated by the Officer Commanding the forces engaged in the manœuvres and two persons nominated by the District Board, and the commission shall decide all appeals of which notice has been given.

(5) The commission may exercise its powers notwithstanding the absence of any member of the commission, and the chairman of the commission shall have a casting vote in the case of an equal division of opinion.

(6) The decision of the commission shall be final and no suit shall lie in any Civil Court in respect of any matter decided by the commission.

(7) No fee shall be charged in connection with any claim, notice, appeal, application or document filed before the Revenue Officer, Collector or the commissioner under this section.

Offences.

7. If, within the area and during the period specified in a notification under sub-section (1) of section 2, any person—

- (a) wilfully obstructs or interferes with the execution of the manœuvres, or
- (b) without due authority enters or remains in any camp, or
- (c) without due authority interferes with any flag or mark or any apparatus used for the purposes of the manœuvres,

he shall be punishable with fine which may extend to ten rupees.

## CHAPTER II.

### FIELD FIRING AND ARTILLERY PRACTICE.

Definitions.

8. In this Chapter—

- (a) “field firing” includes air armament practice;
- (b) “notified area” means an area defined in a notification issued under sub-section (1) of section 9.

Power of Provincial Government to authorise field firing and artillery practice.

9. (1) The Provincial Government may, by notification in the local official Gazette, define any area as an area within which for a specified term of years the carrying out periodically of field firing and artillery practice may be authorised.

(2) The Provincial Government may, by notification in the local official Gazette, authorise the carrying out of field firing and artillery practice throughout a notified area or any specified part thereof during any period or periods specified in the notification.

(3) Before any notification under sub-section (2) is issued, the Provincial Government shall publish notice of its intention to issue such notification as early as possible in advance of the issue of the notification, and no such notification shall be issued until the expiry of two months from the date of the first publication of the notice in the local official Gazette.

(4) The notice required by sub-section (3) shall be given by publication in the local official Gazette and shall also be given throughout the notified area by publication in some newspaper circulating in and in the language commonly understood in that area and by beat of drum and by affixation in all prominent places of copies of the said notice in the language of the locality and in such other manner as may be prescribed by rules made under section 13 and shall be repeated by like publication one week as nearly as may be before the commencement of the period or of each period specified in the notification:

Provided that the fact of the said beat of drum and affixation shall be verified in writing by one headman and two other literate inhabitants of the locality and provided further that such notice by the beat of drum shall be given seven and two days as nearly as may be before the commencement of such field firing and artillery practice.

10. (1) Where a notification under sub-section (2) of section 9 has been issued, such persons as are included in the forces engaged in field firing or artillery practice may, within the notified area or specified part thereof during the specified period or periods,—

Powers exercisable for purposes of field firing and artillery practice.

- (a) carry out field firing and artillery practice with lethal missiles, and
- (b) exercise, subject to the provisions of sections 3 and 4, any of the rights conferred by section 3 on forces engaged in military manœuvres:

Provided that the provisions of sub-section (2) of section 3 shall not debar entry into, or interference with, any place specified in that sub-section, if it is situated in an area declared to be a danger zone under sub-section (2) of this section, to the extent that may be necessary to ensure the exclusion from it of persons and domestic animals:

Provided further that in the case of a dwelling house occupied by women adequate warning shall be given through a local inhabitant and entry shall be effected after such warning in the presence of two respectable inhabitants of the locality.

(2) The Officer Commanding the forces engaged in any such practice may, within the notified area or specified part thereof, declare any area to be a danger



zone, and thereupon the Collector shall, on application made to him by the Officer Commanding the forces engaged in the practice, prohibit the entry into and secure the removal from such danger zone of all persons and domestic animals during the times when the discharge of lethal missiles is taking place or there is danger to life or health.

**Compensation.**      11. The provisions of sections 5 and 6 shall apply in the case of field firing and artillery practice as they apply in the case of military manœuvres:

Provided that the compensation payable under this section shall include compensation for exclusion or removal from any place declared to be a danger zone of persons or domestic animals, such compensation to be disbursed at not less than the minimum rates prescribed by rules made under section 13 before the exclusion or removal is enforced, and shall also include compensation for any loss of employment or deterioration of crops resulting from any such exclusion or removal.

**Offences.**      12. If, during any period specified in a notification issued under sub-section (2) of section 9, any person within a notified area—

- (a) wilfully obstructs or interferes with the carrying out of field firing or artillery practice, or
- (b) without due authority enters or remains in any camp, or
- (c) without due authority enters or remains in any area declared to be a danger zone at a time when entry thereto is prohibited, or
- (d) without due authority interferes with any flag or mark or target or any apparatus used for the purposes of the practice,

he shall be punishable with fine which may extend to ten rupees.

## CHAPTER III.

### GENERAL.

**Power to make rules.**      13. The Provincial Government may, by notification in the local official Gazette, make rules—

- (a) prescribing the manner in which the notices required by sub-section (2) of section 2 and

*Indian Finance Act, 1938.*

sub-section (3) of section 9 shall be published in the areas concerned,

- (b) regulating the use under this Act of land for manœuvres or field firing and artillery practice in such manner as to secure the public against danger and to enable the manœuvre, or practice to be carried out without interference and with the minimum inconvenience to the inhabitants of the areas affected;
- (c) regulating the procedure of the Revenue Officers and commissions referred to in section 6 in such manner as to secure due publicity regarding the method of making claims for compensation and preferring appeals from original awards of compensation, the expeditious settlement of claims and of appeals and the payment of compensation so far as possible direct to the claimants; and
- (d) defining the principles to be followed by the Revenue Officers and commissions referred to in section 6 in assessing the amount of compensation to be awarded.

**THE INDIAN FINANCE ACT, 1938.<sup>1</sup>**

[26th March, 1938.]

An Act to fix the duty on salt manufactured in, or imported by land into, certain parts of British India, to fix maximum rates of postage under the Indian Post Office Act, 1898, and to fix rates of income-tax and super-tax.

**W**HEREAS it is expedient to fix the duty on salt manufactured in, or imported by land into, certain parts of British India, to fix maximum rates of

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<sup>1</sup> This Act was made by the Governor General under S. 67-B of the Government of India Act as set out in the Ninth Schedule to the Government of India Act, 1935. No number was given to this Act.

For Statement of Objects and Reasons, see Gazette of India, 1938, Pt. V, p. 30.

The Act has been applied to British Baluchistan, see Gazette of India, 1938, Pt. I, p. 929; and to all partially excluded areas of the Province of Orissa, see Orissa Govt., Notfn. No. 1721-F., dated the 2nd April 1941.

postage under the Indian Post Office Act, 1898, and **VI of 1898.**  
to fix rates of income-tax and super-tax; It is hereby  
enacted as follows :—

**Short title and extent.** 1. (1) This Act may be called the Indian Finance Act, 1938.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

**Salt duty.** 2. The provisions of section 7 of the Indian Salt Act, 1882, shall, in so far as they enable the Governor **XII of 1882.**  
General in Council to impose by rule made under that section a duty on salt manufactured in, or imported into, any part of British India be construed as if, for the year beginning on the 1st day of April, 1938, they imposed such duty at the rate of one rupee and four annas per maund of eighty-two and two-sevenths pounds avoirdupois of salt manufactured in, or imported by land into, any such part, and such duty shall, for all the purposes of the said Act, be deemed to have been imposed by rule made under that section.

**Inland postage rates.** 3. For the year beginning on the 1st day of April, 1938, the Schedule contained in the Schedule to this Act shall be inserted in the Indian Post Office Act, 1898, as the First Schedule to that Act. **VI of 1898.**

**Income-tax and super-tax.** 4. (1) Income-tax for the year beginning on the 1st day of April, 1938, shall be charged at rates applicable to the total income of each assessee the same, and increased in each case by the same fraction of the amount of the rate, as for the year beginning on the 1st day of April, 1937.

(2) The rates of super-tax for the year beginning on the 1st day of April, 1938, shall, for the purposes of section 55 of the Indian Income-tax Act, 1922, be the **XI of 1922.**  
same rates, increased in each case by the same fraction of the amount of the rate, as for the year beginning on the 1st day of April, 1937.

(3) For the purposes of sub-section (1) "total income" means total income as determined in accordance with the provisions of the Indian Income-tax Act, 1922.

**XI of 1922.**

THE SCHEDULE.

Schedule to be inserted in the Indian Post Office Act,  
1898.

[*See section 3.*]

“THE FIRST SCHEDULE.

INLAND POSTAGE RATES.

[ *See section 7.* ]

*Letters.*

For a weight not exceeding one tola . . . . .	One anna.
For every tola, or fraction thereof, exceeding one tola . . . . .	Half an anna.

*Postcards.*

Single . . . . .	Nine pies.
Reply . . . . .	One and a half annas.

*Book, Pattern and Sample Packets.*

For the first two and a half tolas or fraction thereof . . . . .	Six pies.
For every additional two and a half tolas, or fraction thereof, in excess of two and a half tolas . . . . .	Three pies.

*Registered Newspapers.*

For a weight not exceeding ten tolas . . . . .	Quarter of an anna.
For a weight exceeding ten tolas and not ex- ceeding twenty tolas . . . . .	Half an anna.
For every twenty tolas, or fraction thereof, ex- ceeding twenty tolas . . . . .	Half an anna.

*Parcels.*

For a weight not exceeding forty tolas . . . . .	Four annas.
For every forty tolas, or fraction thereof, ex- ceeding forty tolas . . . . .	Four annas.”

## THE INDIAN TEA CONTROL ACT, 1938.

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## THE SCHEDULE.

ACT No. VIII OF 1938<sup>1</sup>

[28th March, 1938.]

An Act to provide for the control of export of tea from and for the control of the extension of the cultivation of tea in British India.

**W**HEREAS it is expedient, for the purpose of implementing the agreement which the Central Government has entered into with the Governments of Ceylon and the Netherlands India to give effect to the provisions of the International Agreement made between associations representing the tea growers of India, Ceylon and the Netherlands India, to provide for the control of the export of tea from, and for the control of the extension of the cultivation of tea in, British India; It is hereby enacted as follows:—

Short title,  
extent,  
commencement  
and duration.

1. (1) This Act may be called the Indian Tea Control Act, 1938.

(2) It extends to the whole of British India.

(3) It shall come into force on the 1st day of April, 1938.

(4) It shall remain in force only up to the 31st day of March, 1948.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “Committee” means the Indian Tea Licensing Committee constituted under this Act;

<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1937, Pt. V, p. 306; for the Report of the Select Committee, see *ibid.*, 1938, Pt. V, p. 1.

This Act has been applied to:—

The district of Ranchi, see Notification No. 1371-11C-68-Com., dated 23rd June, 1938, Bihar Gazette, 1938, Pt. II, p. 700.

British Baluchistan, see Notification No. 200-F., dated 10th August, 1938, Gazette of India, 1938, Pt. I, p. 1371;

Jaunsar-Bawar pargana of Dehra Dun district, U. P. Government Notification No. 4011/XVIII-265, dated 17th August, 1938;

The Chittagong hill tracts with effect from 1st April, 1938 by Bengal Government Notifications Nos. 20802-E.A., dated 27th September, 1938 and 11709-E.A., dated 9th November, 1939;

The Darjeeling district with effect from 1st April, 1938, by Bengal Government Notifications Nos. 739-Com., dated 8th March, 1939 and 328-Com., dated 1st November, 1939.

The Act has been extended to the excluded and partially excluded areas in Assam, see Notification No. 3443-G.S., dated 8th August, 1938, Assam Gazette, 1938, Pt. II, p. 1134.

*(Chapter I.—The Indian Tea Licensing Committee.)*

VIII of 1878,

XXI of 1924,

- (b) “Customs-collector” means a Customs-collector as defined in clause (c) of section 3 of the Sea Customs Act, 1878, for the purposes of that Act, or of that Act, as applied to the import and export of goods by air, or a Collector of Land Customs as defined in clause (c) of section 2 of the Land Customs Act, 1924, as the case may be;
- (c) “export” means to take out of British India by land, sea or air to any place outside India other than the French and Portuguese Settlements bounded by India or a country notified in this behalf by the Central Government by notification in the official Gazette;
- (d) “Indian export allotment” means the total quantity of tea which may be exported during any one financial year;
- (e) “owner” includes any agent of an owner;
- (f) “prescribed” means prescribed by rules made under this Act;
- (g) “standard export figure” means a quantity of 383,242,916 pounds *avoirdupois* of tea;
- (h) “tea” means—
- (i) in Chapter III and Chapter IV, the plant *Camellia Thea* (Linn.), and
  - (ii) elsewhere, the commodity known as tea made from the leaves of the plant *Camellia Thea* (Linn.), including green tea but excluding tea waste; and
- (i) “tea seed” includes seeds, roots, stumps, cuttings, buds, and any living portion of the plant *Camellia Thea* (Linn.), which may be used to propagate that plant.

## CHAPTER I.

## THE INDIAN TEA LICENSING COMMITTEE.

3. (1) The Central Government shall constitute a Committee, to be called the Indian Tea Licensing Committee, consisting of the following members:—

*Constitution of  
the Indian Tea  
Licensing  
Committee.*

- (a) one member to be nominated by each of the following bodies, namely:—
- (i) the Indian Tea Association, Calcutta,
  - (ii) the Assam Branch of that Association,



(Chapter I.—The Indian Tea Licensing Committee.)

- (iii) the Surma Valley Branch of that Association,
  - (iv) the Dooars Planters Association,
  - (v) the Indian Tea Planters Association, Jalpaiguri, and the Terai Indian Planters Association, Terai, acting together, and
  - (vi) the Darjeeling Planters Association and the Terai Planters Association, acting together;
- (b) two members to be elected in the prescribed manner by and from among Indian owners of tea estates to which export quotas were allotted under the Indian Tea Control Act, 1933, for the financial year beginning on the 1st day of April, 1937, one to represent the Indian Tea Planters of the Assam Valley and one to represent the Indian Tea Planters of the Surma Valley, the Indian State of Tripura, the Chittagong Hill Tracts and the District of Chittagong; XXIV of 1933.
- (c) three members to be nominated by the United Planters Association of Southern India, one to represent tea estates in British India, and one to represent tea estates in Indian States;
- (d) one member to be nominated by the Government of the Indian State of Travancore to represent the tea estates in that State;
- (e) one member to be elected in the prescribed manner by and from among Indian owners of tea estates to represent tea estates in Southern India excluding Travancore owned by Indians; and
- (f) one member to be elected by owners of tea gardens of Kangra, Dehra Dun, Kumaon Behar and other unrepresented Tea Estates.
- (2) Within three months after the commencement of this Act, the Central Government shall publish in the official Gazette the names of all members of the Committee, and thereupon the Committee shall be deemed to be constituted.

1938 : Act VIII.] *Indian Tea Control.*

(Chapter I.—*The Indian Tea Licensing Committee.*)

XXIV of 1938. (3) Until the Committee is constituted as provided in sub-section (2), the Indian Tea Licensing Committee constituted under the Indian Tea Control Act, 1933, shall be deemed to be the Committee constituted under this section.

4. (1) If any authority or body fails to make within <sup>Vacancies.</sup> two months any nomination or election which it is entitled to make under section 3, the Central Government may itself nominate a member to fill the vacancy.

(2) Where a member of the Committee dies, resigns, ceases to reside in India or becomes incapable of acting, the Central Government may, on the recommendation of the authority or body which is entitled to make the first nomination or election under section 3, or where such recommendation is not made within two months, then on its own initiative, nominate a person to fill the vacancy.

(3) No act done by the Committee shall be questioned on the ground merely of the existence of any vacancy in or any defect in the constitution of the Committee.

5. The Committee shall elect a chairman from amongst its members, and may appoint such sub-committees and executive officers as may be necessary for the efficient performance of the duties imposed upon it by this Act. <sup>Sub-committees and executive officers.</sup>

6. (1) The Committee may make by-laws consistent with this Act and with the rules made thereunder for all or any of the following matters, namely:— <sup>Power to make by-laws.</sup>

- (a) the regulation of the procedure to be followed at meetings of the Committee;
- (b) the appointment of sub-committees;
- (c) the delegation to sub-committees, members or officers of the Committee of any of the powers of the Committee under this Act;
- (d) the determination of the travelling allowances of the members or officers of the Committee or of the members of a sub-committee;
- (e) the appointment, promotion and dismissal of officers, assessors and servants of the Committee, and the creation and abolition of appointments of such officers, assessors and servants;

(Chapter I.—*The Indian Tea Licensing Committee.*)

(f) the regulation of the grant of pay and leave to such officers, assessors and servants; and

(g) any other matter in respect of which by-laws may be made under this Act or the rules made thereunder.

(2) All by-laws made under this section shall be subject to the previous sanction of the Central Government.

Central Government's power of control.

7. (1) Save in respect of proceedings and orders under sections 28, 29 and 30, all acts of the Committee shall be subject to the control of the Central Government which may cancel, suspend or modify as it thinks fit any such act.

(2) Without prejudice to the generality of the foregoing provision, any person aggrieved by any order of the Committee under section 14 may appeal to either the Central Government or the High Court of the Province within which the tea estate is situated within sixty days from the date of such order:

Provided that an appeal preferred to the Central Government or the High Court shall bar an appeal against the same order to the other.

(3) The records of the Committee shall be open to inspection at all reasonable times by any officer authorised in this behalf by the Central Government.

(4) Subject to rules framed under the Act every owner of a tea estate to whom a quota is allotted shall be entitled to inspect the records of the Committee and on payment of the prescribed fee shall also be entitled to obtain copies of any proceedings of orders of the Committee.

Keeping and auditing of accounts.

8. (1) The Committee shall publish an annual report and shall keep accounts of all fees received by it under this Act and of the manner in which they are expended and shall also publish a summary of the accounts along with the annual report.

(2) Such accounts shall be examined and audited annually by auditors appointed in this behalf by the Central Government, and such auditors shall have power to disallow any item which has been, in their opinion, expended otherwise than in pursuance of the purposes of this Act.

(Chapter I.—*The Indian Tea Licensing Committee.*)

(3) If any item is disallowed under sub-section (2), an appeal shall lie to the Central Government whose decision shall be final.

9. (1) The Central Government may, by notification in the official Gazette, declare the Committee to be dissolved, and on the date of the publication of any such notification the Committee shall stand dissolved and this Act shall be deemed to be repealed.

*Dissolution of the Committee.*

(2) When the Committee is dissolved either under this section or by the expiry of this Act, the unexpended balance of fees received by the Committee under this Act shall lapse to the Central Government.

10. The Central Government may, by notification in the official Gazette, make rules—

*Power to make rules.*

- (a) providing for the conduct of the elections referred to in clauses (b) and (e) of sub-section (1) of section 3;
- (b) providing for the establishment and maintenance of offices by the Committee;
- (c) providing for the conduct of business by the Committee and determining the number of members which shall form a quorum at meetings;
- (d) providing for the maintenance by the Committee of a record of all business transacted and for submission of copies thereof to the Central Government;
- (e) regulating the preparation of annual estimates of receipts and expenditure;
- (f) regulating the keeping of accounts of receipts and expenditure;
- (g) determining the custody in which the current account of the Committee shall be kept, and the bank or banks at which surplus money at the credit of the Committee may be deposited at interest;
- (h) regulating the term of office of members of the Committee and the circumstances in which and the authority by which members may be removed; and
- (i) generally, to carry out the provisions of this Chapter.

(Chapter II.—Control over the Export of Tea.)

## CHAPTER II.

## CONTROL OVER THE EXPORT OF TEA.

Limitation of  
application of  
Chapter.

11. Nothing in this Chapter shall apply to tea—

- (a) proved to the satisfaction of the Customs-collector to have been imported into British India from any port outside India, or
- (b) shipped as stores on board any vessel, in such quantity as the Customs-collector considers reasonable having regard to the number of the crew and passengers, and the length of the voyage on which the vessel is about to depart, or
- (c) exported by post in packages not exceeding one pound *avoirdupois* in weight.

Control of  
export of tea  
and tea seed.

12. (1) No tea shall be exported unless covered by a licence issued by or on behalf of the Committee.

(2) No tea shall be taken by land, sea or air out of British India to any of the French or Portuguese Settlements bounded by India unless covered by a permit issued by or on behalf of the Committee.

(3) No tea seed shall be exported unless covered by a permit issued by or on behalf of the Central Government.

Indian export  
allotment.13. The Indian export allotment for each financial year during the operation of this Act shall be declared by the Central Government by notification in the official Gazette after consulting the Committee and paying due regard to all interests concerned and shall be expressed as a number of pounds *avoirdupois* equivalent to a stated percentage of the standard export figure.

<sup>1</sup>[Provided that the Central Government may, by subsequent notification issued at any time during the financial year, alter the Indian export allotment as so declared, and thereupon the Indian export allotment as so altered shall be the Indian export allotment for that year.]

Export quotas  
and crop basis.

14. (1) Any tea estate or any sub-division of a tea estate to which an export quota was allotted under the Indian Tea Control Act, 1933, and any tea estate

XXIV of 1933.

<sup>1</sup>Added by s. 2 of the Indian Tea Control (Amendment) Ordinance, 1940 (7 of 1940).

*(Chapter II.—Control over the Export of Tea.)*

which the Central Government may within one year from the commencement of this Act authorise to apply for the allotment of an export quota under this Act, shall on application made to the Committee for the allotment to the estate of an export quota have the right, subject to the provisions of this Act, to receive an export quota.

(2) The export quota of a tea estate, that is, the total quantity of tea which may be exported by the owner of the tea estate during the financial year, shall be an amount bearing to the crop basis of the estate as determined by the Committee in accordance with the principles set forth in the Schedule the same proportion as the Indian export allotment for the financial year in question bears to the total of the crop basis of all tea estates in India for that year <sup>1</sup>[and, when such allotment is altered under the proviso to section 13 during the financial year, shall be deemed to be altered accordingly:

Provided that when the export quota of a tea estate has been reduced in consequence of an alteration or alterations during the financial year of the Indian export allotment, any tea exported by the owner of the estate in accordance with the export quota as subsisting for the time being which is in excess of the amount permitted to be exported in accordance with that export quota as finally revised for the year shall be excluded from the computation of the total quantity of tea which may be exported by that owner during the financial year, and shall be a permissible export notwithstanding that the Indian export allotment for the financial year may be thereby exceeded];

(3) The crop basis of a tea estate may be re-determined by the Committee if—

- (a) application is made by the owner of the estate in this behalf before the 30th day of September, 1938, and
- (b) the Committee is satisfied that there exist grounds of special hardship arising out of circumstances not under the control of the owner or of any previous owner of the estate and relating to conditions existing prior to the 1st day of April, 1933.

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<sup>1</sup> Added by s. 3 of the Indian Tea Control (Amendment) Ordinance, 1940 (7 of 1940).

## (Chapter II.—Control over the Export of Tea.)

(4) The total of all export quotas allotted to tea estates <sup>1</sup>[at any time during any financial year] shall not exceed the Indian export allotment <sup>2</sup>[for the time being] for that year.

Right to  
export  
licences

15. (1) The owner of a tea estate to which an export quota has been allotted for any financial year shall have a right to obtain at any time during that year export licences to cover the export of tea up to the amount of the unexhausted balance of the quota, that is, up to the amount of the quota less the amount for which export licences have already been issued against it.

(2) The right of the owner of a tea estate under this section may be transferred in whole or in part, and, subject to proof of the transfer to the satisfaction of the Committee and to the completion of the prescribed documents to enable the Committee to give effect to the transfer, the transferee shall have a right to obtain export licences up to the amount covered by the transfer or up to the amount of the unexhausted balance of the quota, whichever may be less.

<sup>3</sup>[Provided that if in consequence of an alteration under the proviso to section 13 of the Indian export allotment for the financial year the export quota allotted to the owner of the tea estate is reduced, any transfer of a right to obtain export licences already made by such owner shall be void in so far as it relates to the future export of tea in excess of his export quota as so reduced, and the transferee shall be entitled to obtain from the transferor a refund of the amount paid in respect of such excess.]

(3) Subject to the conditions specified in sub-section (2), any transferee referred to in that sub-section may again transfer the whole or any part of his rights to the owner of a tea estate, but not to any other person.

(4) Nothing in sub-section (3) shall operate to restrict the issue of licences for the export of tea expressed to be sold with export rights.

Grant of  
export  
licences.

16. (1) The owner of any tea estate to which an export quota has been allotted or any person to whom he has transferred his rights may at any time before the 21st day of March of the financial year to which

<sup>1</sup> Subs. for "for any financial year" by s. 3 of the Indian Tea Control (Amendment) Ordinance, 1940 (7 of 1940).

<sup>2</sup> Ins., *ibid.*

<sup>3</sup> Added by s. 4, *ibid.*

(Chapter II.—Control over the Export of Tea.)

the quota relates apply in writing to the Committee for an export licence covering a stated quantity of tea.

(2) If the unexhausted balance of the quota is sufficient to cover the stated quantity, the Committee shall on receipt of the requisite fee issue an export licence covering the stated quantity.

(3) Every licence shall be in duplicate in the prescribed form, shall bear the date of its issue and shall be valid up to the end of the financial year in which it is issued:

Provided that save as provided in section 17 the Committee shall not date or issue any export licence after the end of the financial year in which the application for it was made.

17. (1) Where the tea covered by an export licence Special export licences.  
 X XIV of 1938. issued under the Indian Tea Control Act, 1933, has not been exported before the 31st day of March, 1938, the person to whom the licence was granted may, before the 14th day of April, 1938, forward the licence to the Committee and submit therewith an application for a special export licence covering the same quantity of tea, and the Committee shall, on receipt of the requisite fee, if any, issue a special export licence accordingly.

(2) Where tea, in respect of which an export licence has been or could have been granted under this Act, has not been exported before the end of the financial year in which the licence was or could have been issued, the person to whom the licence was or could have been granted may, before the 14th day of April of the following financial year, forward an application to the Committee for a special export licence covering the same quantity of tea, and the Committee shall, on receipt of the requisite fee, if any, issue a special export licence accordingly.

(3) A special export licence shall be in duplicate in the prescribed form, shall bear the date of its issue, and shall be valid in the case of a special export licence issued in the year 1938 up to the 30th day of June of that year and in the case of a special export licence issued in any subsequent year up to the 31st day of May of the year in which it was issued.

(4) The quantity of tea covered by a special export licence shall be accounted for against the export quota of the year in which the original licence was or could have been issued under this Act or under the Indian



*(Chapter II.—Control over the Export of Tea.)*

Committee to  
maintain  
accounts of  
quotas.

18. (1) The Committee shall maintain an account of every export quota showing, in addition to such other particulars as the Committee may think fit, the licences issued against it and the unexhausted balance.

(2) Any owner of a tea estate shall be entitled, on payment of the requisite fee, to a copy of the account relating to his quota, certified in the manner laid down in the by-laws.

Tea for export  
to be covered  
by licence or  
permit.

19. (1) No consignment of tea or tea seed shall be shipped or waterborne to be shipped for export or shall be exported until the owner has delivered to the Customs-collector a valid export licence or special export licence in duplicate or a permit issued by or on behalf of the Central Government covering the quantity to be shipped.

(2) No consignment of tea or tea seed shall be shipped or waterborne to be shipped for carriage to any of the French or Portuguese Settlements bounded by India until the owner has delivered to the Customs-collector a permit issued by or on behalf of the Committee or issued by or on behalf of the Central Government, as the case may be, covering the quantity to be shipped.

(3) No permit for the passage of any tea by land into any of the French or Portuguese Settlements bounded by India shall be granted under sub-section (1) of section 5 of the Land Customs Act, 1924, XIX of 1911, unless the application for such permit is accompanied by a permit granted in this behalf by the Committee covering the quantity to be passed.

Power of  
Committee to  
call for  
returns.

20. (1) The Committee may serve by post a notice upon the owner of any tea estate or upon his manager, requiring him to furnish, within such period not being less than thirty days as it may specify in the notice, such returns relating to the production, sale and export of tea produced on the estate, or to any other matter as it may deem necessary to enable it to discharge its duties under this Chapter.

(2) Where any return required under sub-section (1) in respect of any tea estate is not furnished within the period specified in the notice, the Committee may refuse to allot a quota to that estate under section 14, or, where a quota has already been allotted, may cancel the unexhausted balance of that quota and refuse to issue any further export licences under section 16 against that quota or to recognise or give effect to any transfer under section 15.

*(Chapter II.—Control over the Export of Tea.)*

21. (1) The Committee may serve by post a notice upon any person claiming to be the owner of any tea estate or upon his agent or manager or upon any person claiming to be the agent or the manager of the owner of any tea estate requiring him to furnish, within such period as may be specified in the notice or within such extended period as the Committee may allow, such documentary or other evidence as may be required to prove to the satisfaction of the Committee that such person is the owner of such tea estate or is the agent or manager of the owner of a tea estate, as the case may be.

Power of Committee to require evidence of ownership.

(2) Where any person fails to comply with the requirements of a notice served on him under sub-section (1) or where the evidence furnished by such person is insufficient to prove to the satisfaction of the Committee that such person is the owner of the tea estate of which he claims to be the owner or is the agent or manager of the owner of a tea estate, as the case may be, the Committee may refuse to issue to such person or to his agent or manager any export licences against the quota allotted to such tea estate.

22. (1) The Committee may charge and collect the following fees, namely:—

- (a) a licence fee for every export licence or special export licence or permit issued by it, at such rates, not exceeding one rupee per thousand pounds of tea or part thereof covered by the licence or permit, as the Central Government may, on the recommendation of the Committee by notification in the official Gazette, fix in this behalf;
- (b) a fee, not to exceed eight annas per acre of the area concerned, on any application under sub-section (3) of section 14 for re-determination of crop basis; and
- (c) copying fees for certified copies of accounts of quotas, at the rate of one rupee per copy:

Provided that the owner of any tea estate to which a quota has been allotted under section 14 may make, or the Committee may require him to make, a consolidated payment of export licence fees at the rate fixed under clause (a) to cover the whole of the quota.

(Chapter II.—Control over the Export of Tea.  
Chapter III.—Control over the Extension of Tea  
Cultivation.)

(2) The Committee shall apply the fees collected by it under this section to the meeting of expenses incurred by it in pursuance of the purposes of this Act, and, with the previous sanction of the Central Government, to the payment of a contribution towards the maintenance of any international committee established in furtherance of the said purposes in or by tea producing countries generally.

Power to  
make rules.

23. The Central Government may, by notification in the official Gazette, make rules—

- (a) prescribing all matters requiring to be prescribed for the purposes of the Schedule;
- (b) regulating the grant of permits for the carriage of tea to the French and Portuguese Settlements;
- (c) prescribing the documents referred to in sub-section (2) of section 15;
- (d) prescribing the form of export licences and special export licences and permits; and
- (e) generally to carry out the purposes of this Chapter.

Bar of  
jurisdiction.

24. No quota fixed, no order granting or refusing to grant any licence or permit, and no other act done by the Committee under this Chapter shall be called in question in any Court except the High Court under the provisions of sub-section (2) of section 7 of this Act.

Export of tea  
produced in  
Indian States.

25. Where legislation enacted in any Indian State has made provision in pursuance of the agreement implemented by and in consonance with the provisions contained in this Act for the control of the export of tea from and for the control of the extension of the cultivation of tea in the State, the Committee shall issue export licences, special export licences and permits for the export or carriage out of British India of tea produced in any such State in the same manner and subject to the same incidents as such licences or permits are issued in respect of tea produced in British India.

### CHAPTER III.

#### CONTROL OVER THE EXTENSION OF TEA CULTIVATION.

Method of  
control of  
extension of  
tea cultivation.

26. So long as this Act remains in force, no one shall plant tea in any land which was not planted with tea on the 31st day of March, 1938, save in

*(Chapter III.—Control over the Extension of Tea Cultivation.)*

pursuance of a written permission granted by or on behalf of the Committee:

Provided that this section shall apply to the replacing of tea areas by planting new areas, but nothing in this section shall prohibit the in-filling of or supplying of vacancies on land planted with tea at the 31st day of March, 1938, or the replanting of tea upon—

- (a) land planted with tea at the 31st day of March, 1933, from which the original bushes have been uprooted, or
- (b) land planted with tea at the 31st day of March 1931, from which the original bushes have been uprooted. .

27. (1) Subject to the provisions of section 29 and section 30, the total area of land in British India, in respect of which the permissions referred to in section 26 may be granted, shall not exceed one-half of one per cent. of the total area of the land planted with tea in British India on the 31st day of March, 1938.

*Limitations to the extension of tea cultivation*

(2) Subject to the provisions of section 29 and section 30, the total area of land in any Province, in respect of which such permissions may be granted, shall be determined by the Committee and shall be as near as may be one-half of one per cent. of the total area in the Province which was planted with tea on the 31st day of March, 1938.

(3) The Committee shall publish the total areas so determined for the various Provinces by notification in the official Gazette of the Central Government as soon as may be after the commencement of this Act.

(4) The Committee shall grant permission for planting new areas to the tea estates in accordance with rules to be prescribed <sup>1</sup>[upto such total area in each province as may be notified under sub-section (3)] provided that permission shall be granted to extend an existing area planted with tea only to a tea estate of which the total existing area planted with tea does not exceed 300 acres where the estate is owned by a limited liability company, or 150 acres where it is owned by any individual proprietor or proprietors :

<sup>1</sup> Subs. for the original words by s. 2 and Sch. I of the Repealing and Amending Act, 1939 (34 of 1939).

(Chapter III.—Control over the Extension of Tea Cultivation.)

Provided that the Committee shall also be empowered to grant extensions for the Tocklai and Nellakotta experimental stations.

Grant of permission to plant tea.

28. (1) Applications for permission to plant tea on any land not planted with tea on the 31st day of March, 1938, shall be made to the Committee not later than six months from the commencement of this Act and shall contain a clear statement of all special circumstances justifying the application.

(2) Subject to the limits laid down in section 27, the Committee may grant or refuse the permission applied for or may grant it in part only, or may call for further information from the applicant.

(3) No order by the Committee under sub-section (2) shall be called in question by any Court.

Grant of permission to plant tea in special circumstances.

29. (1) Where any land which was on the 31st day of March, 1938, planted with tea—

(a) has since become wholly incapable of carrying tea through subsidence, flood, erosion, earthquake or other irresistible superhuman cause, or

(b) has since been compulsorily acquired under the provisions of the Land Acquisition Act, 1894, or of any other law for the time being in force and no longer carries tea,

I of 1894.

the owner of the tea estate in which such land was situated may apply to the Committee for permission to plant tea on land not planted with tea.

(2) Upon such application being made and upon proof to the satisfaction of the Committee that the applicant is entitled to the benefit of sub-section (1), the Committee may grant permission to plant tea on land not planted with tea:

Provided that the area of land, in respect of which such permission is granted, shall be within the area of the same tea estate and shall not exceed in extent the area of the land incapable of carrying tea or compulsorily acquired, as the case may be.

(3) All areas of land in respect of which permission to plant tea is granted under this section shall be excluded when computing for the purposes of section 27 the total area of land in respect of which the permissions referred to in section 26 may be granted.

*(Chapter III.—Control over the Extension of Tea Cultivation.)*

**30.** (1) Subject to the provisions of sub-section Tea nurseries. (4), the owner of a tea estate may establish nurseries on land not previously planted with tea for the growing of plants intended for in-filling or supplying vacancies or for replanting land planted with tea within the area of the estate or for any other purpose approved by the Committee:

Provided that the total area utilised for nurseries in British India shall not upon the 31st day of March, 1943, exceed the area so utilised in British India on the 31st day of March, 1933.

(2) All areas of land utilised for nurseries in accordance with this section shall be excluded when computing for the purposes of section 27 the total area of land in respect of which the permissions referred to in section 26 may be granted.

(3) The Committee may at any time serve by post a notice upon the owner of any tea estate or upon his manager requiring him to furnish within such period not being less than thirty days as may be specified in the notice such returns relating to the area of the land utilised for nurseries as it may deem necessary.

(4) If any return required under sub-section (3) is not furnished to the Committee within the period specified in the notice or if in the opinion of the Committee the total area of the land utilised for nurseries is excessive, the Committee may make such restrictive or other order as it deems necessary and in particular may order the uprooting of any bushes planted on any such land.

**31.** (1) Any applicant aggrieved by an order of the Committee under section 28, section 29 or section 30 may appeal to the Provincial Government within sixty days from the date thereof and the Provincial Government may cancel, modify or suspend any such order. Appeal to Provincial Government.

(2) The records of the Committee relating to proceedings under this Chapter shall be open to inspection at all reasonable times by any officer authorised in this behalf by the Provincial Government.

**32.** (1) The Committee may at any time serve by post a notice upon the owner of any tea estate or upon his manager requiring him to furnish within such period not being less than thirty days as may be specified in the notice such returns relating to the cultivation of tea on the estate as it may deem necessary. Power of the Committee to call for returns and to inspect.

(Chapter III.—Control over the Extension of Tea Cultivation. Chapter IV.—Penalties and Procedure.)

(2) Any member of the Committee and any officer of the Committee or person authorised by it in this behalf may at any reasonable time enter upon and inspect the lands of any tea estate and may require the owner of the estate to produce for inspection any records of the estate in his control or custody relating to the cultivation of tea on the estate.

(3) Where any return required under sub-section (1) in respect of any tea estate is not furnished to the Committee within the period specified in the notice, the Committee may refuse to grant any permission under section 28 to plant tea on that estate.

## CHAPTER IV.

### PENALTIES AND PROCEDURE.

Penalty for  
illicit export.

33. A breach of the provisions of sub-section (1) or sub-section (2) of section 19 shall be punishable as if it were an offence under Item No. 8 of section 167 of the Sea Customs Act, 1878, and the provisions of section 168 and of Chapter XVII of that Act shall apply accordingly. VIII of 1878-

Penalty for  
making false  
return.

34. Any owner of a tea estate, or his agent or manager who has furnished any return under sub-section (1) of section 20, or under sub-section (3) of section 30, or under sub-section (1) of section 32, containing any particular which is false and which he knew to be false or did not believe to be true, shall be punishable with fine which may extend to one thousand rupees.

Penalty for  
obstructing  
inspection of  
tea estate.

35. Whoever obstructs any member or officer of the Committee or any person authorised by the Committee, while such member, officer or person is entering upon or inspecting the lands of any tea estate under sub-section (2) of section 32, and whoever, having control over or custody of any records of a tea estate relating to the cultivation of tea on that estate, refuses or fails to produce such records when required by a member or officer of the Committee or by a person authorised by the Committee under that sub-section, shall be punishable with fine which may extend to one thousand rupees.

(Chapter IV.—Penalties and Procedure. Chapter  
V.—Savings.)

36. (1) Whoever knowingly plants tea or causes tea to be planted in any land in contravention of section 26 shall be punishable with fine which may extend to one thousand rupees for the first offence, and with fine which may extend to five thousand rupees for any subsequent offence. Penalty for illicit cultivation.

(2) Whoever uses any land in contravention of any order made by the Committee under section 30, or fails to comply with any order made by the Committee under sub-section (4) of section 30, shall be punishable with fine which may extend to one thousand rupees.

37. Where any person has been convicted of any offence under section 36, the convicting Court may direct that the tea in respect of which the offence was committed shall be removed from the land within a specified time, and, in the event of the order not being duly complied with, may cause the tea to be removed and may recover the cost from the person convicted as if it were arrears of land revenue due on the tea estate on which the offence was committed. Removal of tea planted without permission.

38. (1) No Magistrate other than a Magistrate of the first class shall take cognisance of an offence under section 34, section 35 or section 36, and such Magistrate may take cognisance of an offence only upon complaint made by a person authorised by the Committee and with the previous sanction of the Central Government, where the offence is that of furnishing a false return under sub-section (1) of section 20, and of the Provincial Government in any other case. Trial of offences under sections 34, 35 and 36.

(2) The Committee shall be responsible for the conduct of all prosecutions of offences under section 34, section 35 and section 36.

## CHAPTER V.

## SAVINGS.

39. Notwithstanding the expiry of the Indian Tea Savings. Control Act, 1933, and notwithstanding the provisions of sub-section (2) of section 9 of that Act,—

- (a) the unexpended balance of fees received by the Indian Tea Licensing Committee constituted under that Act shall not lapse to



*(Chapter V—Savings.)*

Government but shall be transferred to the Indian Tea Licensing Committee as constituted under section 3 of this Act.

- (b) until provision is otherwise made under the corresponding provisions of this Act, all fees fixed, all licences and permits issued and all quotas allotted under the Indian Tea Control Act, 1933, shall, unless inconsistent with <sup>XXIV of 1933.</sup> the provisions of this Act, be deemed to have been fixed, issued or allotted under this Act; and
- (c) any offence punishable under the Indian Tea Control Act, 1933, shall be punishable <sup>XXIV of 1933.</sup> and may be dealt with as if it were an offence punishable under the corresponding provision of this Act,

and anything done before the 31st day of March, 1938, by the Indian Tea Licensing Committee constituted under the Indian Tea Control Act, 1933, <sup>XXIV of 1933.</sup> with a view to the allotment to tea estates of export quotas under and in accordance with this Act, shall, so long as it is not inconsistent with any of the provisions of this Act, be as valid as if it had been done after this Act came into force.

*(The Schedule.)*1938 : Act X.] *Cutchi Memons.*

## THE SCHEDULE.

*(See section 14.)*

Crop Basis mentioned in section 14 (2) of the Act will include the following:—

- (1) The Crop Basis of a tea estate for each financial year shall on and from the 1st April, 1938, be the crop basis which was ascertained for such tea estate for the financial year 1937-38, or the highest figure fixed for any year after investigation by the Committee, whichever be higher, in accordance with the rules under the Indian Tea Control Act, 1933, with the addition of allowances for special hardship determined under rules 4 and 5 framed under section 23 of the Indian Tea Control Act, 1933.
- (2) Allowances for Young areas, *i.e.*, tea planted from 1st January, 1926 onwards to be added automatically in accordance with scales that may be fixed for different localities in the prescribed manner.
- (3) Allowances for low producing areas as may be determined in the prescribed manner.

## THE CUTCHI MEMONS ACT, 1938.

ACT NO. X OF 1938.<sup>1</sup>*[8th April, 1938.]*

An Act to provide that all Cutchi Memons shall be governed in matters of succession and inheritance by the Muhammadan Law.

**W**HEREAS it is expedient that all Cutchi Memons be governed in matters of succession and inheritance by the Muhammadan Law; It is hereby enacted as follows:—

1. (1) This Act may be called the Cutchi Memons Act, 1938. Short title and commencement.

<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1937, Pt. V, p. 271; for Report of the Select Committee, see *ibid.*, 1938, Pt. V, p. 27.

The Act has been applied to the Santhal Parganas district and the Chota Nagpur division subject to certain modifications, by Bihar Government Notification, No. 1089/A-15/40-J.R., dated 31st August, 1940.

(2) It shall come into force on the 1st day of November, 1938.

Cutchi Memons to be governed in certain matters by Muhammadan Law.

2. Subject to the provisions of section 8, all Cutchi Memons shall, in matters of succession and inheritance, be governed by the Muhammadan Law.

Savings.

3. Nothing in this Act shall affect any right or liability acquired or incurred before its commencement, or any legal proceeding or remedy in respect of any such right or liability; and any such legal proceeding or remedy may be continued or enforced as if this Act had not been passed.

Repeal.

4. The Cutchi Memons Act, 1920, is hereby repealed. XLVI of 1920.

## THE CRIMINAL LAW AMENDMENT ACT, 1938.

ACT O. XX OF 1938.<sup>1</sup>

[14th September, 1938.]

An Act to amend the criminal law.

**W**HEREAS it is expedient to supplement the criminal law by providing for the punishment of certain acts prejudicial to the recruitment of persons to serve in, and to the discipline of, His Majesty's Forces; It is hereby enacted as follows:—

Short title,  
extent and  
commence-  
ment.

1. (1) This Act may be called the Criminal Law Amendment Act, 1938.

(2) It extends to the whole of British India.

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<sup>1</sup> For the Statement of Objects and Reasons, *see* Gazette of India, 1938, Pt. V, p. 276.

The Act has been applied to British Baluchistan, *see* Notification No. 309-F., dated 15th December, 1938, Gazette of India, 1938, Pt. I, p. 2041.

(3) It shall come into force in a Province on such date as the Provincial Government may, by notification in the official Gazette, appoint in this behalf for such province.

2. Whoever—

- (a) with intent to affect adversely the recruitment of persons to serve in the Military, Naval or Air Forces of His Majesty, wilfully dissuades or attempts to dissuade the public or any person from entering any such Forces, or

Dissuasion  
from enlistment  
and instigation  
to mutiny or  
insubordina-  
tion after  
enlistment.

- (b) without dissuading or attempting to dissuade any person from entering such Forces, instigates the public or any person to do, after entering any such Force, any thing which is an offence punishable as mutiny or insubordination under section 27 of the Indian Army Act, 1911, or sections 10 to 12 and 14 to 17 inclusive of the Naval Discipline Act as applied to the Indian Navy by the Indian Navy (Discipline) Act, 1934, or sections 35 to 37 inclusive of the Indian Air Force Act, 1932, as the case may be,

VIII of 1911.

XXXIV of  
1934.

XIV of 1932.

shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

No person shall be prosecuted for any offence under this Act except with the previous sanction of the Provincial Government.

*Exception 1.*—The provisions of clause (a) of this section do not extend to comments on or criticism of the policy of Government in connection with the Military, Naval or Air Forces, made in good faith without any intention of dissuading from enlistment.

*Exception 2.*—The provisions of clause (a) of this section do not extend to the case in which advice is given in good faith for the benefit of the individual to whom it is given, or for the benefit of any member of his family or of any of his dependants.

# THE EMPLOYERS' LIABILITY ACT, 1938.

ACT NO. XXIV OF 1938.<sup>1</sup>

[24th September, 1938.]

An Act to declare that certain defences shall not be raised in suits for damages in British India in respect of injuries sustained by workmen.

**W**HEREAS it is expedient to declare that certain defences shall not be raised in suits for damages in British India in respect of injuries sustained by workmen; It is hereby enacted as follows:—

Short title  
and extent.

1. (1) This Act may be called the Employers' Liability Act, 1938.

(2) It extends to the whole of British India.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "workman" means any person who has entered into, or works under a contract of, service or apprenticeship with an employer whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, oral or in writing; and

(b) "employer" includes any body of persons whether incorporated or not, any managing agent of an employer, and the legal representatives of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him.

Defence of  
common  
employment  
barred in  
certain cases.

3. Where personal injury is caused to a workman—

(a) by reason of the omission of the employer to maintain in good and safe condition any way, works, machinery or plant connected

<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1938, Pt. V, p. 286.

This Act has been applied to British Baluchistan, see Notification No. 309-F., dated 15th December, 1938, Gazette of India, 1938, Pt. I, p. 2041.

with or used in his trade or business, or by reason of any like omission on the part of any person in the service of the employer who has been entrusted by the employer with the duty of seeing that such way, works, machinery or plant are in good and safe condition; or

- (b) by reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him, whilst in the exercise of such superintendence; or
- (c) by reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform and did conform, where the injury resulted from his having so conformed; or
- (d) by reason of any act or omission of any person in the service of the employer done or made in obedience to any rule or bye-law of the employer (not being a rule or bye-law which is required by or under any law for the time being in force to be approved by any authority and which has been so approved) or in obedience to particular instructions given by any person to whom the employer has delegated authority in that behalf or in the normal performance of his duties;

a suit for damages in respect of the injury instituted by the workman or by any person entitled in case of his death shall not fail by reason only of the fact that the workman was at the time of the injury a workman of, or in the service of, or engaged in the work of, the employer.

4. In any such suit for damages, the workman shall not be deemed to have undertaken any risk attaching to the employment unless the employer proves that the risk was fully explained to and understood by the workman and that the workman voluntarily undertook the same.

Risk not to be deemed to have been assumed without full knowledge.

5. Nothing in this Act shall affect the validity of any decree or order of a civil Court passed before the commencement of this Act in any such suit for damages.

Saving.

# THE · EMPLOYMENT OF CHILDREN ACT, 1938.

## ACT NO. XXVI OF 1938.<sup>1</sup>

[1st December, 1938.]

An Act to regulate the admission of children to certain industrial employments.

**W**HEREAS it is expedient to regulate the admission of children to certain industrial employments; It is hereby enacted as follows:—

Short title  
and extent.

1. (1) This Act may be called the Employment of Children Act, 1938.

(2) It extends to the whole of British India.

Definitions.

2. In this Act—

<sup>2</sup>[(a)] “competent authority”, in respect of a major port, as defined in the Indian Ports Act, 1908, and in respect of a federal railway, as defined in the Indian Railways Act, 1890, means the Central Government, and <sup>XV of 1908.</sup> ~~IX~~ of 1890 in any other case means the Provincial Government.

<sup>3</sup>[(b)] “occupier” of a workshop means the person who has ultimate control over the affairs of the workshop;

(c) “prescribed” means prescribed by rules made under this Act;

(d) “workshop” means any premises (including the precincts thereof) wherein any industrial process is carried on, but does not include any premises to which the provisions of section 50 of the Factories Act, 1934, for the time being apply.]

<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1938, Pt. V, p. 284.

The Act has been applied to :—

British Baluchistan, see Notification No. 201-F., dated 26th September, 1939, Gazette of India, 1939, Pt. I, p. 1634;

The Darjeeling district and to the partially excluded areas of the Mymensingh district with effect from 1st October, 1939, see Notification No. 301-Com., dated 26th September, 1939, Calcutta Gazette, dated 28th September, 1939.

The Excluded areas in the Province of Orissa, by Orissa Government Notification No. 1444-111C-14/41-Com., dated 16th April, 1941.

<sup>2</sup> Ins. by s. 2 of the Employment of Children (Amendment) Act, 1939 (15 of 1939) (with effect from 1st October, 1939).

<sup>3</sup> Added, *ibid.* (with effect from 1st October, 1939).

3. (1) No child who has not completed his fifteenth year shall be employed or permitted to work in any occupation connected with the transport of passengers, goods or mails by railway. Prohibition of employment of children in certain occupations.

(2) No child who has not completed his fifteenth year shall be employed or permitted to work in any occupation involving the handling of goods within the limits of any port to which for the time being any of the provisions of the Indian Ports Act, 1908, are applicable.

XV of 1908.

<sup>1</sup>[(3) No child who has not completed his twelfth year shall be employed, or permitted to work, in any workshop wherein any of the processes set forth in the Schedule is carried on:

Provided that nothing in this sub-section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family only and without employing hired labour or to any school established by, or receiving assistance or recognition from, a Provincial Government.]

<sup>2</sup>[3A The Provincial Government, after giving, by notification in the official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add any description of process to the Schedule, and thereupon the Schedule shall have force in the Province as if it has been enacted accordingly. Power to amend the Schedule.

3B. Before work in any of the processes set forth in the Schedule is carried on in any workshop after the 1st day of October, 1939, the occupier shall send to the inspector, within whose local limits the workshop is situated, a written notice containing— Notice to inspector before carrying on work in certain processes.

- (a) the name and situation of the workshop,
- (b) the name of the person in actual management of the workshop,
- (c) the address to which communications relating to the workshop should be sent, and
- (d) the nature of the processes to be carried on in the workshop.

<sup>1</sup> Added by s. 3 of the Employment of Children (Amendment) Act, 1939 (15 of 1939) (with effect from 1st October 1939).

<sup>2</sup> Ins. by s. 4, *ibid.* (with effect from 1st October, 1939).



Disputes as to age.

**3C.** If any question arises between an inspector and an employer as to whether any child has or has not completed his twelfth or fifteenth year, as the case may be, the question shall, in the absence of a certificate as to the age of such child, granted by a prescribed medical authority, be referred by the inspector for decision to the prescribed medical authority.]

Penalty.

**4.** Whoever employs any child or permits any child to work in contravention of the provisions of section 3 <sup>1</sup>[or fails to give notice as required by section 3B] shall be punishable with fine which may extend to five hundred rupees.

Procedure relating to offences.

**5.** (1) No prosecution under this Act shall be instituted except by or with the previous sanction of an inspector appointed under section 6.

<sup>2</sup>[(2) Every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purposes of this Act, be conclusive evidence as to the age of the child to whom it relates.]

(3) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

Appointment of inspectors

**6.** The competent authority may appoint persons to be inspectors for the purpose of securing compliance with the provisions of this Act, and any inspector so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code.

XLV of 1860.

Power to make rules.

**7.** (1) The competent authority may by notification in the official Gazette and subject to the condition of previous publication make rules for carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) regulate the procedure of inspectors appointed under section 6, and
- (b) make provision for the grant of certificates of age in respect of young persons in employment or seeking employment, <sup>3</sup>[the medical

<sup>1</sup> Ins. by s. 5 of the Employment of Children (Amendment) Act, 1939 (15 of 1939) (with effect from 1st October, 1939).

<sup>2</sup> Subs. for the original sub-section by s. 6, *ibid.* (with effect from 1st October, 1939).

<sup>3</sup> Subs. by s. 7, *ibid.* (with effect from 1st October, 1939).

authorities] which may issue such certificates, the form of such certificate, the charges which may be made therefor, and the manner in which such certificates may be issued:

Provided that no charge shall be made for the issue of any such certificate if the application is accompanied by evidence of age deemed satisfactory by the authority concerned.

8. Sub-section (1A) of section 6 of the Indian <sup>Amendment of section 6, Act XV of 1908.</sup> Ports Act, 1908, and the words, brackets, figure and letter "and sub-section (1A)" in sub-section (2) of the said section shall be omitted.

# <sup>1</sup>[THE SCHEDULE.

(See SECTIONS 3, 3A AND 3B.)

## *List of Processes.*

1. *Bidi-making.*
2. *Carpet-weaving.*
3. *Cement manufacture, including bagging of cement.*
4. *Cloth-printing, dyeing and weaving.*
5. *Manufacture of matches, explosives and fire works.*
6. *Mica-cutting and splitting.*
7. *Shellac manufacture.*
8. *Soap manufacture.*
9. *Tanning.*
10. *Wool cleaning.]*

<sup>1</sup> Added by s. 8 of the Employment of Children (Amendment) Act, 1939 (15 of 1939) (with effect from 1st October, 1939).

**THE MOTOR VEHICLES ACT, 1939.**

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ACT No. IV OF 1939.<sup>1</sup>

[16th February, 1939.]

**An Act to consolidate and amend the law relating to motor vehicles.**

**W**HEREAS it is expedient to consolidate and amend the law relating to motor vehicles in British India; It is hereby enacted as follows:—

## CHAPTER I.

## PRELIMINARY.

1. (1) This Act may be called the Motor Vehicles Act, 1939. Short title, extent and commencement.

(2) It extends to the whole of British India.

(3) It shall come into force on the 1st day of July, 1939; but <sup>2</sup>[section 38 and Chapter IV shall not have effect until the 1st day of April, 1940, or such earlier date as the Provincial Government may, by notification in the official Gazette, appoint, and], Chapter VIII shall not have effect until the 1st day of July, 1943.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(1) “axle weight” means in relation to an axle of a vehicle the total weight transmitted by the several wheels attached to that axle to the surface whereon the vehicle rests;

<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1938, Pt. V, p. 114; for Report of the Select Committee, see *ibid.*, p. 187.

This Act has been applied to—

British Baluchistan, see Notification No. 41-F, dated 14th March, 1939, Gazette of India, 1939, Pt. I, p. 446, and Notification No. 126-F, dated 3rd July, 1939, Gazette of India, 1939, Pt. I, p. 1180;

All excluded areas in Assam by Assam Government Notification No. 2606-G. S., dated 14th August, 1939;

The Darjeeling district and the partially excluded areas of the Mymensingh district subject to modifications and exceptions, see Notifications Nos. 1771-PL, dated 15th August, 1939, Calcutta Gazette, dated 24th August, 1939 and Bengal Govt. Notification No. 2393-PL, dated 1st December, 1939.

<sup>2</sup> Ins. by s. 2 of the Motor Vehicles (Amendment) Act, 1939 (40 of 1939). (With effect from 1st July, 1939.)

*(Chapter I.—Preliminary.)*

- (2) "certificate of registration" means the certificate issued by a competent authority to the effect that a motor vehicle has been duly registered in accordance with the provisions of Chapter III;
- (3) "contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward under a contract expressed or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum and from one point to another without stopping to pick up or set down along the line of route passengers not included in the contract; and includes a motor cab notwithstanding that the passengers may pay separate fares;

*Explanation.*—"Contract carriage" does not include a motor vehicle, possession of which has been temporarily transferred in accordance with an express agreement of hire for use as a private vehicle and which is used in accordance with the terms of such agreement;

- (4) "delivery van" means any goods vehicle the registered laden weight of which does not exceed 5,000 pounds avoirdupois;
- (5) "driver" includes, where a separate person acts as steersman of a motor vehicle, that person as well as any other person engaged in the driving of the vehicle,
- (6) "fares" includes sums payable for a season ticket or in respect of the hire of a contract carriage;
- (7) "goods" includes live-stock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle;
- (8) "goods vehicle" means any motor vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers;

*(Chapter I.—Preliminary.)*

- (9) "heavy transport vehicle" means a transport vehicle the registered axle weight of which exceeds 10,600 pounds avoirdupois, or the registered laden weight of which exceeds 14,500 pounds avoirdupois;
- (10) "invalid carriage" means a motor vehicle the unladen weight of which does not exceed five hundredweights, specially designed and constructed, and not merely adapted, for the use of a person suffering from some physical defect or disability, and used solely by or for such a person;
- (11) "licence" means the document issued by a competent authority authorising the person specified therein to drive a motor vehicle or a motor vehicle of any specified class or description;
- (12) "licensing authority" means an authority empowered to grant licences, appointed by the Provincial Government by rule made under section 21;
- (13) "light transport vehicle" means any public service vehicle other than a motor cab, or any goods vehicle other than a heavy transport vehicle or a delivery van;
- (14) "locomotive" means a motor vehicle which is itself not constructed to carry any load (other than equipment used for the purpose of propulsion), the unladen weight of which exceeds 16,000 pounds avoirdupois; but does not include a road-roller;
- (15) "motor cab" means any motor vehicle constructed, adapted or used to carry not more than six passengers excluding the driver, for hire or reward;
- (16) "motor car" means any motor vehicle other than a transport vehicle, locomotive, road-roller, tractor, motor cycle or invalid carriage;
- (17) "motor cycle" means a motor vehicle, other than an invalid carriage, with less than four wheels the unladen weight of which, inclusive of any side-car attached to the vehicle, does not exceed 900 pounds avoirdupois;
- (18) "motor vehicle" means any mechanically propelled vehicle adapted for use upon roads

*(Chapter I.—Preliminary.)*

whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or used solely upon the premises of the owner;

- (19) "owner" means, where the person in possession of a motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire purchase agreement, the person in possession of the vehicle under that agreement;
- (20) "permit" means the document issued by a Provincial or Regional Transport Authority authorising the use of a Transport vehicle as a contract carriage, or stage carriage, or authorising the owner as a private carrier or public carrier to use such vehicle;
- (21) "prescribed" means prescribed by rules made under this Act;
- (22) "private carrier" means an owner of a transport vehicle other than a public carrier who uses that vehicle solely for the carriage of goods which are his property or the carriage of which is necessary for the purposes of his business not being a business of providing transport, or who uses the vehicle for any of the purposes specified in sub-section (2) of section 42;
- (23) "public carrier" means an owner of a transport vehicle who transports or undertakes to transport goods, or any class of goods, for another person at any time and in any public place for hire or reward, whether in pursuance of the terms of a contract or agreement or otherwise and includes any person, body, association or company engaged in the business of carrying the goods of persons associated with that person, body, association or company for the purpose of having their goods transported;
- (24) "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of

*(Chapter I.—Preliminary.)*

access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;

- (25) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor cab, contract carriage, and stage carriage;
- (26) "registered axle weight" means in respect of any vehicle the axle weight certified and registered by the registering authority as permissible for that vehicle;
- (27) "registered laden weight" means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle;
- (28) "registering authority" means an authority empowered to register motor vehicles under Chapter III;
- (29) "stage carriage" means a motor vehicle carrying or adapted to carry more than six persons excluding the driver which carries passengers for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;
- (30) "tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion) the unladen weight of which does not exceed 16,000 pounds avoirdupois; but excludes a road-roller;
- (31) "traffic signs" includes all signals, warning sign posts, direction posts, or other devices for the information, guidance or direction of drivers of motor vehicles;
- (32) "trailer" means any vehicle other than a side-car drawn or intended to be drawn by a motor vehicle;
- (33) "transport vehicle" means a public service vehicle, a goods vehicle, a locomotive or a tractor other than a locomotive or tractor used solely for agricultural purposes;
- (34) "unladen weight" means the weight of a vehicle or trailer including all equipment ordinarily used with the vehicle or trailer

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when working, but excluding the weight of a driver or attendant; and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative part or body;

- (35) "weight" means the total weight transmitted for the time being by the wheels of a vehicle to the surface on which the vehicle rests.

## CHAPTER II.

### LICENSING OF DRIVERS OF MOTOR VEHICLES.

Necessity for driving licence.

3. (1) No person shall drive a motor vehicle in any public place unless he holds an effective licence issued to himself authorising him to drive the vehicle; and no person shall so drive a motor vehicle as a paid employee or shall so drive a public service vehicle unless his licence specifically entitles him so to do.

(2) A Provincial Government may prescribe the conditions subject to which sub-section (1) shall not apply to a person receiving instruction in driving a motor vehicle.

(3) Nothing contained in sub-section (1) shall for a period of twelve months after the commencement of this Act invalidate a licence to drive a motor vehicle issued by a competent authority under the provisions of the Indian Motor Vehicles Act, 1914. VIII of 1914.

Age limit in connection with driving of motor vehicles.

4. (1) No person under the age of eighteen years shall drive a motor vehicle in any public place.

(2) Subject to the provisions of section 14, no person under the age of twenty years shall drive a transport vehicle in any public place.

(3) Nothing contained in sub-section (1) or sub-section (2) shall prevent any person who, before the commencement of this Act, possessed a licence to drive a motor vehicle from obtaining a licence to drive a motor vehicle of the same class.

Responsibility of owners of motor vehicles for contraventions of sections 3 and 4.

5. No owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle.

(Chapter II.—*Licensing of Drivers of Motor Vehicles.*)

6. (1) No person shall, while he holds any licence for the time being in force, hold any other licence except a licence issued in accordance with the provisions of section 14, or a document authorising, in accordance with the rules made under section 92, the person specified therein to drive a motor vehicle. Restrictions on the holding of licences.

(2) No holder of a licence shall permit it to be used by any other person.

(3) Nothing in this section shall prevent a licensing authority having the jurisdiction referred to in sub-section (1) of section 7 from adding to the classes of vehicle which the licence authorises the holder to drive.

7. (1) Any person who is not disqualified under section 4 for driving a motor vehicle and who is not for the time being disqualified for holding or obtaining a licence may apply to the licensing authority having jurisdiction in the area in which he ordinarily resides or carries on business or, if the application is for a licence to drive as a paid employee, in which the employer resides or carries on business, for the issue to him of a licence. Grant of licence.

(2) Every application under sub-section (1) shall be in Form A as set forth in the First Schedule, shall be signed by, or bear the thumb impression of, the applicant in two places, and shall contain the information required by the form.

(3) Where the application is for a licence to drive as a paid employee or to drive a transport vehicle, or where in any other case the licensing authority for reasons to be stated in writing so requires, the application shall be accompanied by a medical certificate in Form C, as set forth in the First Schedule, signed by a registered medical practitioner.

(4) Every application for a licence to drive as a paid employee and every application for a licence to drive a transport vehicle shall be accompanied by three clear copies of a recent photograph of the applicant.

(5) If, from the application or from the medical certificate referred to in sub-section (3), it appears that the applicant is suffering from any disease or disability specified in the Second Schedule or any other disease or disability which is likely to cause



*(Chapter II.—Licensing of Drivers of Motor Vehicles.)*

the driving by him of a motor vehicle of the class which he would be authorised by the licence applied for to drive to be a source of danger to the public or to the passengers, the licensing authority shall refuse to issue the licence:

Provided that—

- (a) a licence limited to driving an invalid carriage may be issued to the applicant. if the licensing authority is satisfied that he is fit to drive such a carriage,
- (b) the applicant may, except where he suffers from a disease or disability specified in the Second Schedule, claim to be subjected to a test of his fitness or ability to drive a motor vehicle of a particular construction or design, and, if he passes such test to the satisfaction of the licensing authority and is not otherwise disqualified, the licensing authority shall grant him a licence to drive such motor vehicle as the licensing authority may specify in the licence.

(6) No licence shall be issued to any applicant unless—

- (a) he passes to the satisfaction of the licensing authority the test of competence to drive specified in the Third Schedule, or
- (b) where the application is made within twelve months from the commencement of this Act, he satisfies the licensing authority that he was at the commencement of this Act the holder of a current licence granted under the provisions of the Indian Motor Vehicles Act, 1914, entitling him to drive VIII of 1914. a vehicle of the class or description which he would be entitled to drive under the licence applied for:

Provided that, where the application is for a licence to drive a motor cycle or a motor car, the licensing authority shall exempt the applicant from Part I of the test specified in the Third Schedule if the licensing authority is satisfied that the applicant has previously held a licence to drive and has had not less than twelve months' recent experience of driving a motor cycle or a motor car as the case may be:

Provided further that where the application is for a licence to drive a motor vehicle (not being a

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transport vehicle) otherwise than as a paid employee, the licensing authority may exempt the applicant from Part I of the test specified in the Third Schedule if the applicant possesses a driving certificate issued by an automobile association recognised in this behalf by the Provincial Government.

(7) The test of competence to drive shall be carried out in a vehicle of the type to which the application refers, and, for the purposes of Part I of the test,—

- (a) a person who passes the test in driving a motor car or a motor cab or a delivery van shall be deemed to have passed the test for all of these vehicles;
- (b) a person who passes the test in driving a light transport vehicle shall be deemed also to have passed the test in driving the vehicles referred to in clause (a), and
- (c) a person who passes the test in driving a heavy transport vehicle shall be deemed also to have passed the test in driving any motor vehicle other than a motor cycle.

(8) When an application has been duly made to the appropriate licensing authority and the applicant has satisfied such authority of his physical fitness and of his competence to drive and has paid to the authority a fee of five rupees, the licensing authority shall grant the applicant a licence unless the applicant is disqualified under section 4 for driving a motor vehicle or is for the time being disqualified for holding or obtaining a licence:

Provided that—

- (a) the fee for a licence issued in accordance with the provisions of clause (b) of sub-section (6) shall be three rupees only, and
- (b) a licensing authority may issue a licence to drive a motor cycle or a motor car notwithstanding that it is not the appropriate licensing authority, if the licensing authority is satisfied that there is good reason for the applicant's inability to apply to the appropriate licensing authority.

8. (1) Every licence, except a licence issued under section 14, shall be in Form D as set forth in the First Schedule and shall have affixed thereto one of the signatures or thumb impressions given on

Form and  
contents of  
licence.

(Chapter II.—*Licensing of Drivers of Motor Vehicles.*)

the form of application for the licence and, in the case of a licence to drive as a paid employee or to drive a transport vehicle, one of the photographs referred to in sub-section (4) of section 7.

(2) A licence shall specify whether the holder is entitled to drive as a paid employee and whether he is entitled to drive a public service vehicle and shall further be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:—

- (a) motor cycle,
- (b) motor car,
- (c) motor cab,
- (d) delivery van,
- (e) light transport vehicle,
- (f) heavy transport vehicle,
- (g) locomotive,
- (h) tractor,
- (i) road-roller,
- (j) invalid carriage, or
- (k) motor vehicle of a specified description.

Extent of  
validity of  
licence.

9. (1) Subject to any rules made by a Provincial Government under sub-section (3), a licence issued under the foregoing sections shall be effective throughout British India.

(2) Subject, in the case of international driving permits issued in pursuance of the International Convention relative to motor traffic concluded at Paris on the 24th day of April, 1926, or of any Convention modifying the same, to any rules made by the Central Government under section 92 and subject in any other case to the provisions of sub-section (4), a licence to drive a motor vehicle issued by a competent authority in any Indian State or in the French or Portuguese Settlements bounded by India shall, if the holder is ordinarily resident in the State or Settlement in which the licence was issued, be valid throughout British India as if it were a licence issued under this Act:

Provided that such holder is not disqualified under any of the provisions of this Act for holding or obtaining a licence in British India.

(3) A Provincial Government may, by rules made under section 21,—

- (a) provide that a specification entitling the holder of a licence to drive a public service vehicle shall be made in the licence only by

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or under the authority of the Regional Transport Authority constituted under Chapter IV,

- (b) regulate the submission of applications for such licences to the said authority, or
- (c) require as a condition of its validity in a province that a licence entitling the holder to drive a public service vehicle shall be countersigned by a prescribed authority in the province.

(4) If the Central Government is satisfied that licences issued in British India under this Act are not effective in any Indian State or French or Portuguese Settlement bounded by India or are effective subject to unreasonable conditions or that like conditions and requirements to those imposed by this Act are not imposed in a reasonable degree upon the issue of licences in any State or Settlement as aforesaid, the Central Government shall, by notification in the official Gazette, declare that licences generally or any particular class of licence issued in any such State or Settlement shall not be valid in British India.

10. A licence issued under the foregoing sections shall, subject to the provisions contained in this Act as to the cancellation of licences and the disqualification of holders of licences for holding or obtaining licences, be effective without renewal for a period of twelve months only from the date of issue or last renewal. Currency of licences.

11. (1) Any licensing authority may on application made to it renew a licence issued under the provisions of this Act. Renewal of licences.

(2) An application for the renewal of a licence shall be made in Form B as set forth in the First Schedule and shall contain the declaration required by that form; provided that where the applicant does not or is unable to subscribe to the said declaration the provisions of sub-section (5) of section 7 shall apply.

(3) The fee payable for the renewal of a licence shall be three rupees, if the application for renewal is made previous to, or not more than fifteen days subsequent to, the date on which the licence is due to expire and shall be five rupees in any other case, unless the licensing authority is satisfied that the holder was prevented by good cause from applying

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for the renewal of the licence within fifteen days after its expiry.

(4) When the authority renewing the licence is not the authority which issued the licence, it shall intimate the fact of renewal to the authority which issued the licence.

Revocation of  
licence on  
grounds of  
disease or  
disability.

12. Notwithstanding anything contained in the foregoing sections, a licensing authority may at any time revoke a licence issued by it, or may require, as a condition of continuing to hold such licence, the holder thereof to furnish a fresh medical certificate in Form C as set forth in the First Schedule signed as required by sub-section (3) of section 7, if the licensing authority has reasonable grounds to believe that the holder of the licence is, by virtue of any disease or disability, unfit to drive a motor vehicle.

Orders  
refusing or  
revoking  
licences and  
appeals  
therefrom.

13. (1) Where the licensing authority refuses to issue or revokes or refuses to renew any licence, it shall do so by an order communicated to the applicant or the holder, as the case may be, giving the reasons in writing for such refusal or revocation.

(2) Any person aggrieved by the refusal of a licensing authority to grant or renew a licence or by the revocation of a licence may, within thirty days of the service on him of the order of such refusal or revocation, appeal to the prescribed authority, who shall decide the appeal after giving the licensing authority an opportunity of being heard, and the decision of the appellate authority shall be binding on the licensing authority.

(3) The order of a licensing authority shall, unless the appellate authority, conditionally or unconditionally, directs otherwise, be in force pending the disposal of an appeal under sub-section (2).

Licences to  
drive motor  
vehicles, the  
property of  
the Central  
Government.

14. (1) The authority specified in Part A of the Fourth Schedule may grant licences, valid throughout British India, to persons who have completed their eighteenth year to drive motor vehicles which are the property of the Central Government.

(2) A licence issued under this section shall specify the class or classes of vehicle which the holder is entitled to drive and the period for which he is so entitled.

(3) A licence issued under this section shall not entitle the holder to drive any motor vehicle except

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a motor vehicle which is the property of the Central Government.

(4) The authority issuing any licence under this section shall at the request of any Provincial Government furnish such information respecting any person to whom a licence is issued as that Government may at any time require.

15. (1) If a licensing authority is satisfied after giving him an opportunity of being heard that any person—

Power of licensing authority to disqualify for holding a licence.

(a) is a habitual criminal or a habitual drunkard, or

(b) is using or has used a motor vehicle in the commission of a cognisable offence, or

(c) has by his previous conduct as driver of a motor vehicle shown that his driving is likely to be attended with danger to the public,

it may, for reasons to be recorded in writing, make an order disqualifying that person for a specified period for holding or obtaining a licence.

(2) Upon the issue of any such order a person affected, if he is the holder of a licence, shall forthwith surrender his licence to the licensing authority making the order, if the licence has not already been surrendered, and the licensing authority shall—

(a) if the licence is a licence issued under this Act, keep it until the disqualification has expired or has been removed, or

(b) if it is not a licence issued under this Act, endorse the disqualification upon it and send it to the licensing authority by which it was issued.

(3) Any person aggrieved by an order made by a licensing authority under this section may, within thirty days of the receipt of the order, appeal to the prescribed authority, and such appellate authority shall give notice to the licensing authority and hear either party if so required by that party and may make such inquiry into the matter as it thinks fit. An order made by any such appellate authority shall be final.

16. (1) A Regional Transport Authority constituted under Chapter IV may for reasons to be recorded in writing and subject to any prescribed conditions declare any person disqualified, for a specified period,

Power of Regional Transport Authority to disqualify.

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for holding or obtaining a licence to drive a public service vehicle in the province.

(2) Any person aggrieved by an order of a Regional Transport Authority made under sub-section (1) may within thirty days of the receipt of intimation of such order appeal against the order to the prescribed authority.

Power of  
Court to  
disqualify.

17. (1) Where a person is convicted of an offence under this Act, or of an offence in the commission of which a motor vehicle was used, the Court by which such person is convicted may, subject to the provisions of this section, in addition to imposing any other punishment authorised by law, declare the person so convicted to be disqualified, for such period as the Court may specify, for holding any licence or for holding a licence to drive a particular class or description of vehicle.

(2) A Court shall not order the disqualification of an offender convicted for the first or second time of an offence punishable under section 115.

(3) A Court shall order the disqualification of an offender convicted of an offence punishable under section 117, and such disqualification shall be for a period of not less than six months.

(4) A Court shall order the disqualification of an offender convicted of an offence against the provisions of clause (c) of sub-section (1) of section 87 or of section 89, and such disqualification shall be for a period of not less than one month.

(5) A Court shall, unless for special reasons to be recorded in writing it thinks fit to order otherwise, order the disqualification of an offender—

- (a) who having been convicted of an offence punishable under section 116 is again convicted of an offence punishable under that section,
- (b) who is convicted of an offence punishable under section 120, or
- (c) who is convicted of an offence punishable under section 123:

Provided that the period of disqualification shall not exceed, in the cases referred to in clauses (a) and (b), two years, or, in the case referred to in clause (c), one year.

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(6) A Court ordering the disqualification of an offender convicted of an offence punishable under section 116 may direct that the offender shall, whether he has previously passed the test of competence to drive specified in the Third Schedule or not, remain disqualified until he has subsequent to the making of the order of disqualification passed that test to the satisfaction of the licensing authority.

(7) The Court to which an appeal lies from any conviction of an offence of the nature specified in sub-section (1) may set aside or vary any order of disqualification made by the Court below, and the Court to which appeals ordinarily lie from any Court may set aside or vary any order of disqualification made by that Court, notwithstanding that no appeal lies against the conviction in connection with which such order was made.

18. (1) A person in respect of whom any disqualification order is made shall be debarred to the extent and for the period specified in such order from holding or obtaining a licence and the licence, if any, held by such person at the date of the order shall cease to be effective during such period.

Effect of  
disqualification  
order.

(2) The operation of a disqualification order made under section 17 shall not be suspended or postponed while an appeal is pending against such order or against the conviction as a result of which such order is made, unless the appellate Court so directs.

(3) Any person in respect of whom any disqualification order has been made may at any time after the expiry of six months from the date of the order apply to the Court or other authority by which the order was made, to remove the disqualification; and the Court or authority, as the case may be, may, having regard to all the circumstances, either remove or vary the order of disqualification:

Provided that where an application has been made under this section a second application thereunder shall not be entertained before the expiry of a further period of three months.

19. (1) The Court or authority making an order of disqualification shall endorse or cause to be endorsed upon the licence, if any, held by the person disqualified particulars of the order of disqualification and of any conviction of an offence in respect of which an order of disqualification is made; and particulars of

Endorsements.



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any removal or variation of an order of disqualification made under sub-section (3) of section 18 shall be similarly so endorsed.

(2) A Court by which any person is convicted of an offence specified in the Fifth Schedule shall, whether or not an order of disqualification is made in respect of such conviction, endorse or cause to be endorsed particulars of such conviction on any licence held by the person convicted.

(3) Any person accused of an offence specified in the Fifth Schedule shall when attending the Court bring with him his licence if it is in his possession.

Transfer of  
endorsement  
and issue of  
licence free  
from  
endorsement

20. (1) An endorsement on any licence shall be transferred to any new or duplicate licence obtained by the holder thereof until the holder becomes entitled under the provisions of this section to have a licence issued to him free from endorsement.

(2) Where a licence is required to be endorsed and the licence is at the time not in the possession of the Court or authority by which the endorsement is to be made then—

(a) if the person in respect of whom the endorsement is to be made is at the time the holder of a licence, he shall produce the licence to the Court or authority within five days, or such longer time as the Court or authority may fix, or

(b) if, not being then the holder of a licence, he subsequently obtains a licence, he shall within five days after obtaining the licence produce it to the Court or authority;

and if the licence is not produced within the time specified it shall on the expiration of such time be of no effect until it is produced for the purpose of endorsement.

(3) A person whose licence has been endorsed shall, if during a continuous period of three years since the last endorsement was made no further order of endorsement has been made against him, be entitled, on surrendering his licence and on payment of a fee of five rupees, to receive a new licence free from all endorsements. If the endorsement was only in respect of exceeding a speed limit, he shall be entitled to have a clean licence issued on the expiration of one year from the date of the order:

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Provided that in reckoning the said period of three years and one year, respectively, any period during which the said person was disqualified for holding or obtaining a licence shall be excluded.

(4) When a licence is endorsed by or an order of endorsement is made by any Court, the Court shall send particulars of the endorsement or order, as the case may be, to the licensing authority by which the licence was last renewed and to the licensing authority which granted the licence.

(5) Where the holder of a licence is disqualified by the order of any Court for holding or obtaining a licence, the Court shall take possession of the licence and forward it to the licensing authority by which it was granted or last renewed and that authority shall keep the licence until the disqualification has expired or has been removed and the person entitled to the licence has made a demand in writing for its return to him.

Provided that, if the disqualification is limited to the driving of a motor vehicle of a particular class or description, the Court shall endorse the licence to this effect and shall send a copy of the order of disqualification to the licensing authority by which the licence was granted and shall return the licence to the holder.

(6) Where on an appeal against any conviction or order of a Court which has been endorsed on a licence, the appellate Court varies or sets aside the conviction or order, the appellate Court shall inform the licensing authority by which the licence was last renewed and the licensing authority which granted the licence, and shall amend or cause to be amended the endorsement of such conviction or order.

21. (1) A Provincial Government may make rules for the purpose of carrying into effect the provisions of this Chapter. Power to make rules.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the appointment, jurisdiction, control and functions of licensing authorities and other prescribed authorities;
- (b) for the conduct and hearing of appeals that may be preferred under this Chapter;
- (c) the issue of duplicate licences to replace licences lost, destroyed or mutilated, the

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- replacement of photographs which have become obsolete, and the issue of temporary licences to persons receiving instruction in driving, and the fees to be charged therefor;
- (d) the conditions subject to which a Regional Transport Authority may disqualify a person for holding a licence to drive a public service vehicle;
  - (e) the medical examination and testing of applicants for licences and of drivers and the fees to be charged therefor;
  - (f) the refund of fees paid under the provisions of this Act or of any enactment relating to motor vehicles in force in British India at the commencement of this Act;
  - (g) the granting by registered medical practitioners of the certificates referred to in subsection (3) of section 7;
  - (h) the communication of particulars of licences granted by one licensing authority to other licensing authorities;
  - (i) the control of schools or establishments for the instruction of drivers of motor vehicles and the acceptance of driving certificates issued by such schools or establishments as qualifying the holder for exemption from Part I of the test specified in the Third Schedule;
  - (j) the exemptions of drivers of road-rollers from all or any of the provisions of this Chapter or of the rules made thereunder; and
  - (k) any other matter which is to be or may be prescribed.

### CHAPTER III.

#### REGISTRATION OF MOTOR VEHICLES.

Necessity for registration.

22. (1) No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner.

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(2) Nothing in this section shall apply to a motor vehicle while being driven within the limits of jurisdiction of one registering authority to or from the appropriate place of registration for the purpose of being registered under section 23, 25 or 39 or to a motor vehicle exempted from the provisions of this Chapter while in the possession of a dealer in motor vehicles.

23. (1) Subject to the provisions of section 25 and section 39, every owner of a motor vehicle shall cause the vehicle to be registered by a registering authority in the province in which he has the residence or place of business where the vehicle is normally kept.

Registration  
where to be  
made.

(2) A motor vehicle already registered under any enactment in force in British India at the commencement of this Act shall be deemed to be registered under this Act until the 1st day of April, 1941, and on the application of the owner before that date shall be registered under this Act without payment of any registration fee.

(3) A Provincial Government may, by rules made under section 41, provide that within a prescribed period certificates of registration of any prescribed class of transport vehicles deemed to be registered under this Act by virtue of sub-section (2) shall be presented to a prescribed authority for the entry therein of all or any of the particulars specified in section 37.

24. (1) An application by or on behalf of the owner of a motor vehicle for registration shall be in Form E as set forth in the First Schedule, shall contain the information required by that form, and shall be accompanied by the prescribed fee.

Registration  
how to be  
made.

(2) The registering authority shall issue to the owner of a motor vehicle registered by it a certificate of registration in Form G as set forth in the First Schedule and shall enter in a record to be kept by it particulars of such certificate.

(3) The registering authority shall assign to the vehicle, for display thereon in the prescribed manner, a distinguishing mark (in this Act referred to as the registration mark) consisting of one of the groups of letters allotted to the province by the Sixth Schedule followed by a number containing not more than four figures.

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Temporary  
registration.

25 (1) Notwithstanding anything contained in section 23, the owner of a motor vehicle may apply to any registering authority to have the vehicle temporarily registered in the prescribed manner and for the issue in the prescribed manner of a temporary certificate of registration and a temporary registration mark.

(2) A registration made under this section shall be valid only for a period not exceeding one month, and shall not be renewable.

Production of  
vehicle at  
time of  
registration.

26. The registering authority may before proceeding to register a motor vehicle require the person applying for registration of the vehicle to produce the vehicle either before itself or such authority as the Provincial Government may by order appoint in order that the registering authority may satisfy itself that the particulars contained in the application are true and that the vehicle complies with the requirements of Chapter V and of the rules made thereunder.

Refusal of  
registration.

27. The registering authority may refuse to register any motor vehicle if the vehicle is mechanically defective or fails to comply with the requirements of Chapter V or of the rules made thereunder, or if the applicant fails to furnish particulars of any previous registration of the vehicle, and it shall furnish the applicant whose vehicle is refused registration with the reasons in writing for such refusal.

Effectiveness  
in British  
India of  
registration.

28. (1) Subject to the provisions of section 29, a motor vehicle registered in accordance with this Chapter in any province or deemed to be registered under this Act shall not require to be registered elsewhere in British India and a certificate of registration issued or in force under this Act in respect of such vehicle shall be effective throughout British India:

Provided that the Provincial Government may, by rules made under section 41, provide that the certificates of registration of transport vehicles of any prescribed class issued by an authority not within the province and effective by virtue of sub-section (2) of section 23 shall not be valid unless they contain the particulars specified in section 37 or such of those particulars as may be prescribed.

(2) Subject, in the case of international motor vehicle certificates issued in pursuance of the International Convention relative to motor traffic con-

*(Chapter III.—Registration of Motor Vehicles.)*

cluded at Paris on the 24th day of April, 1926, to any rules made by the Central Government under section 92, and subject in any other case to the provisions of sub-section (1) of section 23 and sub-section (3) and sub-section (4) of this section, a motor vehicle registered by a competent authority in any Indian State or in the French or Portuguese Settlements bounded by India shall not require to be registered in British India:

Provided that there is in force in respect of the vehicle a certificate conforming to and containing substantially the same particulars as the certificate of registration in Form G as set forth in the First Schedule issued by such competent authority in respect of such vehicle.

(3) A certificate complying with the requirements of the proviso to sub-section (2) shall be effective throughout British India as if it were a certificate of registration issued under this Act.

(4) Sub-section (2) shall not apply to any motor vehicle previously registered in British India, if the certificate of registration of the vehicle in British India is for the time being suspended or cancelled for any reason other than that of permanent removal of the vehicle from British India.

(5) If at any time the Central Government is satisfied that motor vehicles registered in British India under this Act are not permitted to be driven in any Indian State or French or Portuguese Settlement without fresh registration in such State or Settlement or are permitted to be driven only subject to unreasonable conditions or that like conditions and requirements to those imposed under this Act (including the specification of the particulars required by Form G as set forth in the First Schedule) are not imposed in a reasonable degree upon the issue and for the continued effectiveness of certificates of registration in any State or Settlement as aforesaid, the Central Government shall, by notification in the official Gazette, declare that certificates of registration generally or in respect of any particular class of motor vehicle issued in any such State or Settlement shall not be effective in British India.

29. (1) When a motor vehicle registered in one province has been kept in another province for a period exceeding twelve months, the owner of the vehicle shall apply to the registering authority, within

Assignment of fresh registration mark on removal to another province.

*(Chapter III.—Registration of Motor Vehicles.)*

whose jurisdiction the vehicle then is, for the assignment of a new registration mark and shall present the certificate of registration to that registering authority.

(2) The registering authority, to which application is made under sub-section (1), shall assign the vehicle a registration mark in accordance with the Sixth Schedule to be carried thenceforth on the vehicle and shall enter the mark upon the certificate of registration before returning it to the applicant and shall, in communication with the registering authority by whom the vehicle was previously registered, arrange for the transfer of the registration of the vehicle from the records of that registering authority to its own records.

(3) A Provincial Government may make rules under section 41 requiring the owner of a motor vehicle not registered within the province, which is brought into or is for the time being in the province, to furnish to a prescribed authority in the province such information with respect to the motor vehicle and its registration as may be prescribed.

Change of  
residence or  
place of  
business.

30. (1) If the owner of a motor vehicle ceases to reside or have his place of business at the address recorded in the certificate of registration of the vehicle, he shall, within thirty days of any such change of address, intimate his new address to the registering authority by which the certificate of registration was issued, or, if the new address is within the jurisdiction of another registering authority, to that other registering authority, and shall at the same time forward the certificate of registration to the registering authority in order that the new address may be entered therein.

(2) A registering authority other than the original registering authority making any such entry shall communicate the altered address to the original registering authority.

(3) Nothing in sub-section (1) shall apply where the change of the address recorded in the certificate of registration is due to a temporary absence not intended to exceed six months in duration or where the motor vehicle is neither used nor removed from the address recorded in the certificate of registration.

Transfer of  
ownership.

31. (1) Within thirty days of the transfer of ownership of any motor vehicle registered under this

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Chapter, the transferee shall report the transfer to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that registering authority together with the prescribed fee in order that particulars of the transfer of ownership may be entered therein.

(2) A registering authority other than the original registering authority making any such entry shall communicate the transfer of ownership to the original registering authority.

32. (1) If a motor vehicle is so altered that the particulars contained in the certificate of registration are no longer accurate, the owner of the vehicle shall, within fourteen days of the making of any such alteration report the alteration to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that authority together with the prescribed fee in order that particulars of the alteration may be entered therein:

*Alteration in motor vehicle.*

Provided that it shall not be necessary to report any change in the unladen weight of the motor vehicle consequent on the addition or removal of fittings or accessories, if such change does not exceed two per cent. of the weight entered in the certificate of registration.

(2) A registering authority other than the original registering authority making any such entry shall communicate the details of the entry to the original registering authority.

33. (1) A registering authority or other prescribed authority, which has reason to believe that any motor vehicle within its jurisdiction is in such a condition that its use in a public place would constitute a danger to the public, or that it fails to comply with the requirements of Chapter V or of the rules made thereunder, may, after giving the owner an opportunity of making any representation he may wish to make, for reasons to be recorded in writing suspend the certificate of registration of the vehicle until the defects are remedied to its satisfaction.

*Suspension of registration.*

(2) An authority other than a registering authority shall, when making a suspension order under subsection (1), intimate in writing the fact of suspension and the reasons therefor to the registering authority within whose jurisdiction the vehicle is at the time of the suspension.



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(3) Where the registration of a motor vehicle has been suspended under sub-section (1) for a continuous period of not less than one month, the registering authority, within whose jurisdiction the vehicle was when the registration was suspended, shall, if it is not the original registering authority, inform that authority of the suspension; and when the suspension has continued without interruption for a period of not less than six months, the registering authority, within whose jurisdiction the vehicle was when the registration was suspended, may, if it is the original registering authority, cancel the registration, and if it is not the original registering authority, shall forward the certificate of registration to that authority which may cancel it forthwith.

(4) The owner of a motor vehicle shall, on the demand of a registering authority or other prescribed authority which has suspended the certificate of registration of the vehicle under this section, surrender the certificate of registration and any token or card issued to authorise the use of the vehicle in a public place.

(5) A certificate of registration and any token or card surrendered under sub-section (4) shall be returned to the owner when the order suspending registration has been rescinded and not before.

**Cancellation of registration.**

34. (1) If a motor vehicle has been destroyed or has been rendered permanently incapable of use, the owner shall, within fourteen days or as soon as may be, report the fact to the registering authority within whose jurisdiction he resides and shall forward to that authority the certificate of registration of the vehicle together with any token or card issued to authorise the use of the vehicle in a public place.

(2) The registering authority shall, if it is the original registering authority, cancel the registration and the certificate of registration, or, if it is not, shall forward the report and the certificate of registration to the original registering authority and that authority shall cancel the registration and the certificate of registration.

(3) Any registering authority may order the examination of a motor vehicle within its jurisdiction by such authority as the Provincial Government may by order appoint and, if upon such examination and after giving the owner an opportunity to make any representation he may wish to make it is satisfied

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that the vehicle is in such a condition that its use in a public place would constitute a danger to the public and that it is beyond reasonable repair, may cancel the registration of the vehicle.

(4) If a registering authority is satisfied that a motor vehicle has been permanently removed out of British India, the registering authority shall cancel the registration.

(5) A registering authority cancelling the registration of a motor vehicle under section 33 or under this section shall communicate the fact in writing to the owner of the vehicle and the owner of the vehicle shall forthwith surrender to that authority the certificate of registration of the vehicle and any token or card issued to authorise the use of the vehicle in a public place.

(6) A registering authority making an order of cancellation under this section shall, if it is the original registering authority, cancel the certificate of registration and the entry relating to the vehicle in its records, and, if it is not the original registering authority, forward the certificate of registration to that authority, and that authority shall cancel the certificate of registration and the entry relating to the motor vehicle in its records.

(7) The expression "original registering authority" in this section and in sections 30, 31, 32 and 33 means the registering authority in whose records the registration of the vehicle is recorded.

35. (1) Any owner of a motor vehicle aggrieved **Appeals.** by an order of refusal under section 27 to register a motor vehicle or under sub-section (1) of section 33 to issue a certificate of fitness or by an order of suspension or cancellation made under section 33 or 34 or by an order of cancellation under sub-section (3) of section 38 may, within thirty days of the date on which he has received notice of such order, appeal against the order to the prescribed authority.

(2) The appellate authority shall give notice of the appeal to the original authority and after giving opportunity to the original authority and the appellant to be heard either personally or by pleader in the appeal pass such orders as it thinks fit:

Provided that orders of the original authority shall remain in force pending the disposal of the appeal unless the appellate authority otherwise directs.

36. (1) After the commencement of this Act, a special requirement for registration of transport vehicle. registering authority shall refuse to register any transport vehicle other than a motor cab, unless the

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application for registration is accompanied by a document in Form F as set forth in the First Schedule signed by the maker of the vehicle or an assembler duly authorised by the maker in this behalf stating the greatest laden weight and greatest axle weights for which the vehicle is designed where several axles are designed:

Provided that nothing in this sub-section shall apply to any application for the registration of a transport vehicle already registered under any enactment in force at the commencement of this Act.

(2) Where a transport vehicle or chassis, as the case may be, has affixed to it a metal plate, bearing the stamp of the maker or assembler and identified as appertaining to the particular vehicle or chassis to which it is attached, which contains the particulars specified in sub-section (1), that plate may at the discretion of a registering authority be deemed to be the document referred to in sub-section (1).

Special  
particulars to  
be recorded on  
registration of  
transport  
vehicle.

37. (1) A registering authority, when registering a transport vehicle other than a motor cab, shall enter in the record of registration and shall also enter in the certificate of registration of the vehicle the following particulars, namely:—

- (a) the unladen weight of the vehicle;
- (b) the number, nature and size of the tyres attached to each wheel;
- (c) the registered laden weight of the vehicle and the registered axle weights pertaining to the several axles thereof, fixed in accordance with sub-section (2) with reference to the particulars of the tyres entered in the certificate of registration; and
- (d) if the vehicle is used or adapted to be used for the carriage of passengers solely or in addition to goods, the number of passengers for whom accommodation is provided,

and the owner of the vehicle shall have the said particulars exhibited in the prescribed manner on the vehicle.

(2) Notwithstanding any statement contained in the document referred to in sub-section (1) of section 36 as supplied by the maker or assembler of a transport vehicle, the registered weight to be recorded by the registering authority for any axle shall not exceed the permissible weight for that axle calculated in accordance with the Seventh Schedule, nor shall the registered laden weight of the vehicle exceed the sum of the several axle weights as so determined.

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Provided that where it appears to a Provincial Government that heavier weights than those specified in the Seventh Schedule may be permitted in a particular locality for vehicles of a particular type, the Provincial Government may by notification in the official Gazette direct that the provisions of this sub-section shall apply with such modifications as may be specified in the notification.

(3) When by reason of an alteration in the number, nature or size of tyres attached to the vehicle the registered laden weight or any registered axle weight recorded in the certificate of registration no longer accords with the laden weight or the axle weight as determined in accordance with sub-section (2), the provisions of section 32 shall apply, and the registering authority shall enter in the certificate of registration a revised registered laden weight and registered axle weights.

38. (1) Subject to the provisions of section 39, a transport vehicle shall not be deemed to be validly registered for the purposes of section 22, unless it carries a certificate of fitness in Form H as set forth in the First Schedule, issued by the prescribed authority, to the effect that the vehicle complies for the time being with all the requirements of Chapter V and the rules made thereunder. Where the prescribed authority refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal.

Certificate of  
fitness of  
transport  
vehicle.

(2) Subject to the provisions of sub-section (3) a certificate of fitness shall remain effective for three years, unless a shorter period, not being in any case less than six months, is specified in the certificate by the prescribed authority.

(3) The issuing authority or other prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made thereunder; and on such cancellation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under Chapter IV shall be deemed to be suspended until a new certificate of fitness has been obtained.

(4) Notwithstanding anything contained in sub-section (1), a Provincial Government may, until the expiry of one year from the commencement of this Act, by rules made under section 41, dispense with

*(Chapter III.—Registration of Motor Vehicles.)*

the necessity for a certificate of fitness in the case of all or any transport vehicles in respect of which certificates of registration and permits had already been issued before the commencement of this Act.

Registration of vehicles, the property of the Central Government.

39. (1) The authority specified in Part B of the Fourth Schedule may register any motor vehicle which is the property of the Central Government; and any vehicle so registered shall not, so long as it remains the property of the Central Government, require to be registered otherwise under this Act.

(2) A transport vehicle registered under this section shall carry a certificate of fitness in Form H as set forth in the First Schedule issued by the authority referred to in sub-section (1).

(3) An authority registering a vehicle under sub-section (1) shall assign a registration mark in accordance with the provisions contained in the Fourth Schedule and shall issue a certificate in respect of the vehicle that the vehicle has been registered under this section.

(4) If a vehicle registered under this section ceases to be the property of the Central Government, the provisions of section 23 shall thereupon apply.

(5) The authority registering a vehicle under sub-section (1) shall furnish to any Provincial Government all such information regarding the general nature, overall dimensions, and axle weights of the vehicle as the Provincial Government may at any time require.

Application of Chapter III to trailers.

40. (1) The registration mark assigned to a trailer shall be displayed in the prescribed manner on the side of the vehicle.

(2) No person shall drive a motor vehicle to which a trailer is or trailers are attached unless the registration mark of the motor vehicle so driven is displayed in the prescribed manner on the trailer or on the last trailer in the train, as the case may be.

Power to make rules.

41. (1) A Provincial Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the conduct and hearing of appeals that may be preferred under this Chapter;
- (b) the appointment, functions and jurisdiction of registering and other prescribed authorities;

*(Chapter III.—Registration of Motor Vehicles.)*

- (c) the issue of certificates of registration and duplicate certificates of registration to replace certificates lost, destroyed or mutilated;
- (d) the temporary registration of motor vehicles, and the issue of temporary certificates of registration and marks;
- (e) the manner in which registration marks and the particulars referred to in sub-section (I) of section 37, and other prescribed particulars shall be exhibited;
- (f) the fees to be charged for the issue or alteration of certificates of registration, for certificates of fitness, for registration marks, and for the examination or inspection of motor vehicles, and the refund of such fees;
- (g) the forms, other than those set forth in the First Schedule, to be used for the purposes of this Chapter;
- (h) the communication between registering authorities of particulars of certificates of registration and by owners of vehicles registered outside the province of particulars of such vehicles and of their registration;
- (i) the particulars to be furnished by the owner of any motor vehicle to the registering authority, upon the transfer of possession of the motor vehicle under the terms of a hiring agreement;
- (j) the extension of the validity of certificates of fitness pending consideration of applications for their renewal;
- (k) the exemption from the provisions of this Chapter, and the conditions and fees for exemption, of motor vehicles in the possession of dealers;
- (l) the exemption of road-rollers from all or any of the provisions of this Chapter and the rules made thereunder, and the conditions governing such exemption; and the exemption of delivery vans from the provisions of section 38 and the conditions governing such exemption; and
- (m) any other matter which is to be or may be prescribed.

*(Chapter IV.—Control of Transport Vehicles.)*

## CHAPTER IV

## CONTROL OF TRANSPORT VEHICLES.

Necessity for  
permits.

42. (1) No owner of a transport vehicle shall use or permit the use of the vehicle in any public place, save in accordance with the conditions of a permit granted or countersigned by a Regional or Provincial Transport Authority authorising the use of the vehicle in that place in the manner in which the vehicle is being used:

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage:

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods vehicle either when carrying passengers or not:

Provided further that a public carrier's permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) In determining, for the purposes of this Chapter, whether a transport vehicle is or is not used for the carriage of goods for hire or reward,—

- (a) the delivery or collection by or on behalf of the owner of goods sold, used or let on hire or hire-purchase in the course of any trade or business carried on by him other than the trade or business of providing transport,
- (b) the delivery or collection by or on behalf of the owner of goods which have been or which are to be subjected to a process or treatment in the course of a trade or business carried on by him, or
- (c) the carriage of goods in a transport vehicle by a manufacturer of or agent or dealer in such goods whilst the vehicle is being used for demonstration purposes,

shall not be deemed to constitute a carrying of the goods for hire or reward; but the carriage in a transport vehicle of goods by a person not being a dealer in such goods who has acquired temporary ownership of the goods for the purpose of transporting them to another place and there relinquishing ownership

*(Chapter IV.—Control of Transport Vehicles.)*

shall be deemed to constitute a carrying of the goods for hire or reward.

(3) Sub-section (1) shall not apply—

- (a) to any transport vehicle owned by or on behalf of the Central Government or a Provincial Government other than a vehicle used in connection with the business of an Indian State Railway;
- (b) to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleansing, road watering or conservancy purposes;
- (c) to any transport vehicle used solely for police, fire brigade or ambulance purposes;
- (d) to any transport vehicle used solely for the conveyance of corpses;
- (e) to any transport vehicle used for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety;
- (f) to any transport vehicle used for any other public purpose prescribed in this behalf;
- (g) to any transport vehicle owned by, and used solely for the purposes of, any educational institution which is recognised by the Provincial Government or whose managing committee is a society registered under the Societies Registration Act, 1860;
- (h) subject to any prescribed conditions, to any transport vehicle owned by the Government of any Indian State or French or Portuguese Settlement bounded by India used for Government purposes unconnected with any commercial enterprise; or
- (i) to any trailer used for any purpose other than the carriage of goods for hire or reward when drawn by a motor vehicle constructed for the carriage of not more than six passengers excluding the driver.

(4) Subject to the provisions of sub-section (3), sub-section (1) shall, if the Provincial Government by rule made under section 68 so prescribes, apply to any motor vehicle adapted to carry more than nine passengers excluding the driver.

43. (1) A Provincial Government, having regard to—

- (a) the advantages offered to the public, trade and industry by the development of motor transport, and

Power to Provincial Government to control road transport.



(Chapter IV.—Control of Transport Vehicles.)

- (b) the desirability of co-ordinating road and rail transport, and
- (c) the desirability of preventing the deterioration of the road system, and
- (d) the desirability of preventing uneconomic competition among motor vehicles,

and after having heard the representatives of the interests affected and having consulted the Provincial and Regional Transport Authorities concerned, may by notification in the official Gazette,—

- (i) prohibit or restrict throughout the province or in any area or on any route within the province, subject to such conditions as it may think desirable, the conveying of long distance goods traffic generally, or of prescribed classes of goods, by private or public carriers; or
- (ii) fix maximum or minimum fares or freights for stage carriages and public carriers to be applicable throughout the province or within any area or on any route within the province.

(2) The Provincial Government shall permit, at such intervals of time as it may fix, the interests affected by any notification issued under sub-section (1) to make representations urging the cancellation or variation of the notification on the following grounds, namely:—

- (a) that the railways are not giving reasonable facilities or are taking unfair advantage of the action of the Provincial Government under this section; or
- (b) that conditions have changed since the publication of the notification; or
- (c) that the special needs of a particular industry or locality require to be considered afresh.

(3) If the Provincial Government, after considering any representation made to it under sub-section (2) and having heard the representatives of the interests affected and the Provincial and Regional Transport Authorities, is satisfied that any notification issued under sub-section (1) ought to be cancelled or varied, it may cancel the notification or vary it in such manner as it thinks fit.

transport  
authorities.

44. (1) The Provincial Government shall, by notification in the official Gazette, constitute for the province a Provincial Transport Authority to exercise

*(Chapter IV.—Control of Transport Vehicles.)*

and discharge the powers and functions specified in sub-section (3), and shall in like manner constitute Regional Transport Authorities to exercise and discharge throughout such areas (in this Chapter referred to as regions) as may be specified in the notification, in respect of each Regional Transport Authority, the powers and functions conferred by or under this Chapter on such Authorities:

Provided that in the North-West Frontier Province and in Chief Commissioner's Provinces the Provincial Government may abstain from constituting any Regional Transport Authority:

Provided further that the area specified as the region of a Regional Transport Authority shall in no case be less than an entire district, or the whole area of a Presidency town.

(2) A Provincial Transport Authority or a Regional Transport Authority shall consist of such number of officials and non-officials as the Provincial Government may think fit to appoint; but no person who has any financial interest whether as proprietor, employee or otherwise in any transport undertaking shall be appointed as or continue as a member of a Provincial or Regional Transport Authority. and, if any person being a member of any such Authority acquires a financial interest in any transport undertaking, he shall, within four weeks of so doing, give notice in writing to the Provincial Government of the acquisition of such interest and shall vacate office.

(3) A Provincial Transport Authority shall exercise and discharge throughout the province the following powers and functions, namely:—

- (a) to co-ordinate and regulate the activities and policies of the Regional Transport Authorities, if any, of the province;
- (b) to perform the duties of a Regional Transport Authority where there is no such Authority and, if it thinks fit or if so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more regions;
- (c) to settle all disputes and decide all matters on which differences of opinion arise between Regional Transport Authorities; and
- (d) to discharge such other functions as may be prescribed.

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(4) For the purpose of exercising and discharging the powers and functions specified in sub-section (3), a Provincial Transport Authority may, subject to such conditions as may be prescribed, issue directions to any Regional Transport Authority and the Regional Transport Authority shall be guided by such directions.

General provision as to applications for permits.

45. Every application for a permit shall be made to the Regional Transport Authority of the region or of one of the regions in which it is proposed to use the vehicle and, if the applicant resides or has his principal place of business in any one of those regions, to the Regional Transport Authority of that region.

Application for stage carriage permit.

46. An application for a permit to use a motor vehicle as a stage carriage (in this Chapter referred to as a stage carriage permit) shall contain the following particulars, namely:—

- (a) the type and seating capacity of the vehicle in respect of which the application is made;
- (b) the route or routes on which or the area within which it is intended to use the vehicle;
- (c) the time table, if any, of the service to be provided; and
- (d) such other matters as may be prescribed.

Procedure of Regional Transport Authority in considering application for stage carriage permit.

47. (1) A Regional Transport Authority shall, in deciding whether to grant or refuse a stage carriage permit, have regard to the following matters, namely:—

- (a) the interest of the public generally;
- (b) the advantages to the public of the service to be provided, including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken;
- (c) the adequacy of existing road passenger transport services between the places to be served, the fares charged by those services and the effect upon those services of the service proposed;
- (d) the benefit to any particular locality or localities likely to be afforded by the service;
- (e) the operation by the applicant of other transport services and in particular of unremunerative services in conjunction with remunerative services; and

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(f) the condition of the roads included in the proposed route or routes;

and shall also take into consideration any representations made by persons already providing road transport facilities along or near the proposed route or routes or by any local authority or police authority within whose jurisdiction any part of the proposed route or routes lies or by any association interested in the provision of road transport facilities.

(2) A Regional Transport Authority shall refuse to grant a stage carriage permit if it appears from any time table furnished that the provisions of this Act relating to the speed at which vehicles may be driven are likely to be contravened:

Provided that before such refusal an opportunity shall be given to the applicant to amend the time table so as to conform to the said provisions.

48. A Regional Transport Authority may, after consideration of the matters set forth in sub-section (1) of section 47,—

Power to restrict the number of stage carriages and impose conditions on stage carriage permits.

<sup>1</sup>[(a) limit the number of stage carriages or stage carriages of any specified type for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region;]

<sup>2</sup>[(b)] issue a stage carriage permit in respect of a particular stage carriage or a particular service of stage carriages;

<sup>2</sup>[(c)] regulate timings of arrival or departure of stage carriages whether they belong to a single or more owners; or

<sup>2</sup>[(d)] attach to a stage carriage permit any prescribed condition or any one or more of the following conditions, namely:—

(i) that the service specified in the permit shall be commenced not later than a specified date and be continued for a specified period;

(ii) that the service may be varied only in accordance with specified conditions;

<sup>3</sup>[(iia) that the stage carriage or stage carriages shall be used only on specified routes or in a specified area;]

<sup>1</sup> Subs. for the original clauses (a) and (b) by s. 2 of the Motor Vehicles (Amendment) Act, 1940 (26 of 1940).

<sup>2</sup> Re-lettered *ibid.*

<sup>3</sup> Ins., *ibid.*

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- (iii) that copies of the fare table and time table shall be exhibited on the stage carriage and that the fare table and time table so exhibited shall be observed;
- (iv) that not more than a specified number of passengers and not more than a specified amount of luggage shall be carried on any specified vehicle at any one time;
- (v) that within municipal limits and in such other areas and places as may be prescribed passengers shall not be taken up or set down at or except at specified points; or
- (vi) that tickets shall be issued to passengers for the fares paid.

Application  
for contract  
carriage  
permit.

49. An application for a permit to use a motor vehicle as a contract carriage (in this Chapter referred to as a contract carriage permit) shall contain the following particulars, namely:—

- (a) the type and seating capacity of the vehicle;
- (b) the area for which the permit is required;
- (c) in the case of a motor vehicle other than a motor cab, the manner in which it is claimed that the public convenience will be served by the vehicle; and
- (d) any other particulars which may be prescribed.

Procedure of  
Regional  
Transport  
Authority in  
considering  
application for  
contract  
carriage  
permit.

50. A Regional Transport Authority shall, in deciding whether to grant or refuse a contract carriage permit, have regard to the extent to which additional contract carriages may be necessary or desirable in the public interest; and shall also take into consideration any representations which may then be made or which may previously have been made by persons already holding contract carriage permits in the region or by any local authority or police authority in the region to the effect that the number of contract carriages for which permits have already been granted is sufficient for or in excess of the needs of the region or any area within the region.

51. A Regional Transport Authority may, after consideration of the matters set forth in section 50,—

- (a) limit the number of contract carriages generally or contract carriages of any specified type for which contract carriage permits may be granted in the region or any specified area within the region;

Power to  
restrict the  
number of  
contract  
carriages and  
impose condi-  
tions on  
contract  
carriage  
permits.

*(Chapter IV.—Control of Transport Vehicles.)*

- (b) fix in the case of motor cabs the fares which may be charged;
- (c) require that every motor cab shall carry a copy of the fare table for inspection by passengers;
- (d) require that any motor cab shall be fitted with a taxi meter; or
- (e) impose on the use of a contract carriage any other condition which may be prescribed.

52. An application for a permit to use a transport vehicle for the carriage of goods for or in connection with a trade or business carried on by the applicant (in this Chapter referred to as a private carrier's permit) shall contain the following particulars, namely:—

- (a) the type and carrying capacity of the vehicle;
- (b) the nature of the goods which the applicant expects normally to carry in connection with his trade or business;
- (c) the area for which the permit is required; and
- (d) any other particular which may be prescribed.

53. (1) A Regional Transport Authority shall, in deciding whether to grant or refuse a private carrier's permit, have regard to the condition of the roads to be used by the vehicle or vehicles in respect of which the application is made, and shall satisfy itself that the vehicle or vehicles for which the permit is required will not be used except in connection with the business of the applicant.

(2) The Regional Transport Authority may in granting a private carrier's permit impose conditions to be specified in the permit relating to the description of goods which may be carried, or the area in which the permit shall be valid, or the maximum laden weight and axle weights of any vehicle used.

(3) If the applicant is the holder of a private carrier's permit which has been suspended or has been the holder of a private carrier's permit which has been revoked, the Regional Transport Authority may at its discretion notwithstanding anything contained in sub-section (1) refuse the application.

Application  
for private  
carrier's  
permit.

Procedure of  
Regional  
Transport  
Authority in  
considering  
application for  
a private  
carrier's  
permit.

*(Chapter IV.—Control of Transport Vehicles.)*

Application  
for public  
carrier's  
permit.

54. An application for a permit to use a motor vehicle for the carriage of goods for hire or reward (in this Chapter referred to as a public carrier's permit) shall contain the following particulars, namely:—

- (a) the routes on which or the area in which it is intended to use the vehicle;
- (b) the type and carrying capacity of the vehicle;
- (c) the manner in which it is claimed that a public need will be served by the vehicle;
- (d) such particulars as the Regional Transport Authority may require with respect to any business as a carrier of goods for hire or reward carried on by the applicant at any time before the making of the application, and of the rates charged by the applicant;
- (e) particulars of any agreement or arrangement, affecting in any material respect the provision within the region of the Regional Transport Authority of facilities for the transport of goods for hire or reward, entered into by the applicant with any other person by whom such facilities are provided, whether within or without the region; and
- (f) any other particulars which may be prescribed.

Procedure of  
Regional  
Transport  
Authority in  
considering  
application for  
public  
carrier's  
permit.

55. A Regional Transport Authority shall, in deciding whether to grant or refuse a public carrier's permit, have regard to the following matters, namely:—

- (a) the interests of the public generally;
- (b) the advantages to the public of the service to be provided and the convenience afforded to the public by the provision of such service;
- (c) the adequacy of existing road transport services for the carriage of goods upon the routes or within the area to be served and the effect upon those services of the service proposed;
- (d) the benefit to any particular locality or localities likely to be afforded by the service;
- (e) the need for providing for occasions when vehicles are withdrawn from service for overhaul or repair; and

*(Chapter IV.—Control of Transport Vehicles.)*

(f) the condition of the roads included in the proposed routes or area;

and shall also take into consideration any representations made by persons already providing road transport facilities along or near to the proposed route or routes or by any local authority within whose jurisdiction any part of the proposed route or routes lies.

56. The Regional Transport Authority may, after consideration of the matters set forth in section 55,—

(a) limit the number of transport vehicles or transport vehicles of any specified type for which public carrier's permits may be granted in the region or in any specified area or on any specified routes within the region; or

(b) attach to a public carrier's permit all or any of the following conditions, namely:—

(i) that the vehicle shall be used only on specified routes or in a specified area,

(ii) that the laden weight and the axle weights of any vehicle used shall not exceed a specified maximum,

(iii) that such records as may be prescribed relating to the plying of the vehicle shall be maintained, and

(iv) any other prescribed condition appropriate to the service to be provided by the vehicle which the Regional Transport Authority thinks proper to impose in the public interest or with a view to prevent uneconomic competition between road transport services.

57. (1) An application for a contract carriage permit or a private carrier's permit may be made at any time.

(2) An application for a stage carriage permit or a public carrier's permit shall be made not less than six weeks before the date on which it is desired that the permit shall take effect, or, if the Regional Transport Authority appoints dates for the receipt of such applications, on such dates.

(3) On receipt of an application for a stage carriage permit or a public carrier's permit, the Regional Transport Authority shall make the application available for inspection at the office of the Authority and

Power to restrict the number of and attach conditions to public carrier's permits.

Procedure in applying for and granting permits.



*(Chapter IV.—Control of Transport Vehicles.)*

shall publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representations in connection therewith may be submitted and the date, not being less than thirty days from such publication, on which, and the time and place at which, the application and any representations received will be considered.

(4) No representation in connection with an application referred to in sub-section (3) shall be considered by the Regional Transport Authority unless it is made in writing before the appointed date and unless a copy thereof is furnished simultaneously to the applicant by the person making such representation.

(5) When any representation such as is referred to in sub-section (3) is made, the Regional Transport Authority shall dispose of the application at a public hearing at which the applicant and the person making the representation shall have an opportunity of being heard either in person or by a duly authorised representative.

(6) When any representation has been made by the persons or authorities referred to in section 50 to the effect that the number of contract carriages for which permits have already been granted in any region or any area within a region is sufficient for or in excess of the needs of the region or of such area, whether such representation is made in connection with a particular application for the grant of a contract carriage permit or otherwise, the Regional Transport Authority may take any such steps as it considers appropriate for the hearing of the representation in the presence of any persons likely to be affected thereby.

(7) When a Regional Transport Authority refuses an application for a permit of any kind, it shall give to the applicant in writing its reasons for the refusal.

Duration and  
renewal of  
permits.

58. (1) A permit other than a temporary permit issued under section 62 shall be effective without renewal for such period, not less than three years and not more than five years, as the Regional Transport Authority may in its discretion specify in the permit:

Provided that in the case of a permit issued or renewed within two years of the commencement of this Act, the permit shall be effective without renewal for such period of less than three years as the Provincial Government may prescribe.

*(Chapter IV.—Control of Transport Vehicles.)*

(2) A permit may be renewed on an application made and disposed of as if it were an application for a permit:

Provided that, other conditions being equal, an application for renewal shall be given preference over new applications for permits.

59. (1) Save as provided in section 61, a permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not without such permission operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit.

General conditions attaching to all permits.

(2) The holder of a permit may, with the permission of the authority by which the permit was granted, replace by another vehicle of the same nature and capacity any vehicle covered by the permit.

(3) The following shall be conditions of every permit—

- (a) that the vehicle or vehicles to which the permit relates are at all times so maintained as to comply with the requirements of Chapter V and the rules made thereunder;
- (b) that the vehicle or vehicles to which the permit relates are not driven at a speed exceeding the speed lawful under this Act;
- (c) that any prohibition or restriction imposed and any maximum or minimum fares or freights fixed by notification made under section 43 are observed in connection with any vehicle or vehicles to which the permit relates;
- (d) that the vehicle or vehicles to which the permit relates are not driven in contravention of the provisions of section 72;
- (e) that the provisions of this Act limiting the hours of work of drivers are observed in connection with any vehicle or vehicles to which the permit relates; and
- (f) that the provisions of Chapter VIII so far as they apply to the holder of the permit are observed.

*(Chapter IV.—Control of Transport Vehicles.)*

Cancellation  
and suspension  
of permits

60. (1) The transport authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit—

- (a) on the breach of any condition specified in sub-section (3) of section 59, or of any condition contained in the permit, or
- (b) if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit, or
- (c) if the holder of the permit ceases to possess the vehicle or vehicles covered by the permit, or
- (d) if the holder of the permit has obtained the permit by fraud or misrepresentation:

Provided that no permit shall be cancelled unless an opportunity has been given to the holder of the permit to submit his explanation.

(2) Where a transport authority cancels or suspends a permit, it shall give to the holder in writing its reasons for the revocation or suspension.

Transfer of  
permit on  
death of  
holder.

61. (1) Where the holder of a permit dies, the person succeeding to the possession of the vehicles covered by the permit may, for a period of three months, use the permit as if it had been granted to himself:

Provided that such person has, within thirty days of the death of the holder, informed the transport authority which granted the permit of the death of the holder and of his own intention to use the permit:

Provided further that no permit shall be so used after the date on which it would have ceased to be effective without renewal in the hands of the deceased holder.

(2) The transport authority may, on application made to it within three months of the death of the holder of a permit, transfer the permit to the person succeeding to the possession of the vehicles covered by the permit.

Temporary  
permits.

62. (1) A Regional Transport Authority may at its discretion, and without following the procedure laid down in section 57, grant permits, to be effective for a limited period not in any case to exceed four months, to authorise the use of a transport vehicle temporarily—

- (a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or

*(Chapter IV.—Control of Transport Vehicles.)*

- (b) for the purposes of a seasonal business, or
- (c) to meet a particular temporary need,

and may attach to any such permit any condition it thinks fit.

(2) A Regional Transport Authority may delegate all or any of its powers under this section to any one of its members.

63 (1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one province shall not be valid in any other province unless countersigned by the Provincial Transport Authority of that other province or by the Regional Transport Authority concerned.

Validation of permits for use outside region in which granted

(2) A Regional Transport Authority when countersigning the permit may attach to the permit any condition which it might have imposed if it had granted the permit, and may likewise vary any condition attached to the permit by the Authority by which the permit was granted.

(3) The provisions of this Chapter relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of countersignatures of permits.

(4) Notwithstanding anything contained in sub-section (1), a Regional Transport Authority of one region may issue a temporary permit under clause (a) or clause (c) of sub-section (1) of section 62 to be valid in another region or province with the concurrence, given generally or for the particular occasion, of the Regional Transport Authority of that other region or of the Provincial Transport Authority of that other province, as the case may be.

64. Any person—

Appeals.

- (a) aggrieved by the refusal of the Provincial or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or
- (b) aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof, or

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- (c) aggrieved by the refusal to transfer the permit to the person succeeding on the death of the holder of a permit, or
- (d) aggrieved by the refusal of the Provincial or a Regional Transport Authority to countersign a permit, or by any condition attached to such countersignature, or
- (e) aggrieved by the refusal of renewal of a permit, or
- (f) being a local authority or police authority or an association which, or a person providing transport facilities who, having opposed the grant of a permit, is aggrieved by the grant thereof or by any condition attached thereto, or
- (g) being the holder of a licence, who is aggrieved by the refusal of a Regional Transport Authority to grant an authorisation to drive a public service vehicle,

may, within the prescribed time and in the prescribed manner, appeal to the prescribed authority who shall give such person and the original authority an opportunity of being heard.

Restriction of  
hours of work  
of drivers.

65. (1) No person shall cause or allow any person who is employed by him for the purpose of driving a transport vehicle or who is subject to his control for such purpose to work—

- (a) for more than five hours before he has had an interval of rest of at least half an hour; or
- (b) for more than nine hours in one day; or
- (c) for more than fifty-four hours in the week.

(2) The Provincial Government may by rule made under section 68 grant such exemptions from the provisions of sub-section (1) as it thinks fit, to meet cases of emergency or of delays by reason of circumstances which could not be foreseen.

(3) The Provincial Government may require persons employing any persons whose work is subject to any of the provisions of sub-section (1) to fix beforehand the hours of work of such persons so as to conform with those provisions, and may provide for the recording of the hours so fixed.

*(Chapter IV.—Control of Transport Vehicles.)*

(4) No person shall work or shall cause or allow any other person to work outside the hours fixed or recorded for the work of such persons in compliance with any rule made under sub-section (3).

(5) The Provincial Government may prescribe the circumstances under which any period during which the driver of a vehicle although not engaged in work is required to remain on or near the vehicle may be deemed to be an interval for rest within the meaning of sub-section (1).

66. Any contract for the conveyance of a passenger in a stage carriage or contract carriage, in respect of which a permit has been issued under this Chapter, shall, so far as it purports to negative or restrict the liability of any person in respect of any claim made against that person in respect of the death of, or bodily injury to, the passenger while being carried in, entering or alighting from the vehicle, or purports to impose any conditions with respect to the enforcement of any such liability, be void.

Voidance of contracts restrictive of liability.

67. (1) A Provincial Government may make rules to regulate, in respect of stage carriages and contract carriages,—

Power to make rules as to stage carriages and contract carriages.

- (a) the conduct of persons licensed to act as drivers of, and the licensing of and the conduct of conductors of, such vehicles when acting as such; and
- (b) the conduct of passengers in such vehicles.

(2) Without prejudice to the generality of the foregoing provision, such rules may—

- (a) authorise the removal from such vehicle of any person infringing the rules by the driver or conductor of the vehicle, or, on the request of the driver or conductor, or any passenger, by any police officer;
- (b) require a passenger who is reasonably suspected by the driver or conductor of contravening the rules to give his name and address to a police officer or to the driver or conductor on demand;
- (c) require a passenger to declare, if so requested by the driver or conductor, the journey he intends to take or has taken in the vehicle and to pay the fare for the whole of such journey and to accept any ticket provided therefor;

*(Chapter IV.—Control of Transport Vehicles.)*

- (d) require, on demand being made for the purpose by the driver or conductor or other person authorised by the owner of the vehicle, production during the journey and surrender at the end of the journey by the holder thereof of any ticket issued to him;
- (e) require a passenger, if so requested by the driver or conductor, to leave the vehicle on the completion of the journey the fare for which he has paid;
- (f) require the surrender by the holder thereof on the expiry of the period for which it is issued of a ticket issued to him;
- (g) require the maintenance of complaint books in stage carriages and prescribe the conditions under which passengers can record any complaints in the same.

Power to make rules for the purposes of this Chapter.

68. (1) A Provincial Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, rules under this section may be made with respect to all or any of the following matters, namely:—

- (a) the period of appointment and the terms of appointment of and the conduct of business by Regional and Provincial Transport Authorities and the reports to be furnished by them;
- (b) the conduct and hearing of appeals that may be preferred under this Chapter;
- (c) the forms to be used for the purposes of this Chapter, including the forms of permits;
- (d) the issue of copies of permits in place of permits lost or destroyed;
- (e) the documents, plates and marks to be carried by transport vehicles, the manner in which they are to be carried and the languages in which any such documents are to be expressed;
- (f) the badges and uniform to be worn by drivers and conductors of stage carriages and contract carriages;
- (g) the fees to be paid in respect of permits, duplicate permits, plates and badges;

*(Chapter IV.—Control of Transport Vehicles.)*

- (h) the custody, production and cancellation on revocation or expiration of permits, and the return of permits which have become void or have been revoked;
- (i) the conditions subject to which a permit issued in one region shall be valid in another region;
- (j) the authorities to whom, the time within which and the manner in which appeals may be made;
- (k) the construction and fittings of, and the equipment to be carried by, stage and contract carriages, whether generally or in specified areas;
- (l) the determination of the number of passengers a stage or contract carriage is adapted to carry and the number which may be carried;
- (m) the conditions subject to which goods may be carried on stage and contract carriages partly or wholly in lieu of passengers;
- (n) the safe custody and disposal of property left in a stage or contract carriage;
- (o) prohibiting the painting or marking of a stage or a contract carriage in such colour or manner as to induce any person to believe that the vehicle is used for the transport of mails;
- (p) the conveyance in stage or contract carriages of corpses or persons suffering from any infectious or contagious disease or goods likely to cause discomfort or injury to passengers and the inspection and disinfection of such carriages, if used for such purposes;
- (q) the provision of taxi meters on motor cabs requiring approval or standard types of taxi meters to be used and examining, testing and sealing taxi meters;
- (r) prohibiting the picking up or setting down of passengers by stage or contract carriages at specified places or in specified areas or at places other than duly notified stands or halting places and requiring the driver of a stage carriage to stop and remain stationary for a reasonable time when so required by a



(Chapter IV.—Control of Transport Vehicles.  
Chapter V.—Construction, equipment and maintenance of Motor Vehicles.)

passenger desiring to board or alight from the vehicle at a notified halting place;

- (s) the requirements (including the provision of proper sanitary arrangements) which shall be complied with in any duly notified stand or halting place;
- (t) requiring the owners of transport vehicles to notify any change of address or to report the failure of or damage to any vehicle used for the conveyance of passengers for hire or reward;
- (u) requiring the person in charge of a stage carriage to carry any person tendering the legal or customary fare;
- (v) the conditions under which and the types of containers or vehicles in which animals or birds may be carried and the seasons during which animals or birds may or may not be carried;
- (w) the licensing of and the conduct of agents for the sale of tickets for travel by stage carriages;
- (x) the inspection of transport vehicles and their contents and of the permits relating to them;
- (y) the carriage of persons other than the driver in goods vehicles;
- (z) the records to be maintained and the returns to be furnished by the owners of transport vehicles; and
- (za) any other matter which is to be or may be prescribed.

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## CHAPTER V.

### CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF MOTOR VEHICLES.

General provision regarding construction and maintenance.

69. Every motor vehicle shall be so constructed and so maintained as to be at all times under the effective control of the person driving the vehicle.

(Chapter V.—*Construction, equipment and maintenance of Motor Vehicles.* Chapter VI.—*Control of Traffic.*)

70. (1) A Provincial Government may make rules regulating the construction, equipment and maintenance of motor vehicles and trailers. Power to make rules.

(2) Without prejudice to the generality of the foregoing power, rules may be made under this section governing any of the following matters either generally in respect of motor vehicles or trailers or in respect of motor vehicles or trailers of a particular class or in particular circumstances, namely:—

- (a) the width, height, length and overhang of vehicles and of the loads carried;
- (b) seating arrangements in public service vehicles and the protection of passengers against the weather;
- (c) the size, nature and condition of tyres;
- (d) brakes and steering gear;
- (e) the use of safety glass;
- (f) signalling appliances, lamps and reflectors;
- (g) speed governors;
- (h) the emission of smoke, visible vapour, sparks, ashes, grit or oil;
- (i) the reduction of noise emitted by or caused by vehicles;
- (j) prohibiting or restricting the use of audible signals at certain times or in certain places;
- (k) prohibiting the carrying of appliances likely to cause annoyance or danger;
- (l) the periodical testing and inspection of vehicles by prescribed authorities;
- (m) the particulars other than registration marks to be exhibited by vehicles and the manner in which they shall be exhibited; and
- (n) the use of trailers with motor vehicles.

## CHAPTER VI.

### CONTROL OF TRAFFIC.

71. (1) No person shall drive a motor vehicle or cause or allow a motor vehicle to be driven in any public place at a speed exceeding the maximum speed fixed for the vehicle by or under this Act or by or under any law for the time being in force: Limits of speed.

*(Chapter VI.—Control of Traffic.)*

Provided that such maximum speed shall in no case exceed the maximum fixed for the vehicle in the Eighth Schedule.

(2) The Provincial Government or any authority authorised in this behalf by the Provincial Government may, if satisfied that it is necessary to restrict the speed of motor vehicles in the interests of public safety or convenience or because of the nature of any road or bridge, by notification in the official Gazette, fix such maximum speed limits as it thinks fit for motor vehicles or any specified class of motor vehicles or for motor vehicles to which a trailer is attached, either generally or in a particular area or on a particular road or roads.

Limits of  
weight and  
imitations  
in use.

72. (1) The Provincial Government may prescribe conditions for the issue of permits for heavy transport vehicles by the Provincial or Regional Transport Authorities and may prohibit or restrict the use of such vehicles in any area or route within the province:

Provided that any permit issued before the commencement of this Act may be continued or renewed by the competent authority for a period not exceeding three years under the conditions upon which the permit was originally issued, unless the Provincial Government directs otherwise.

(2) Except as may be otherwise prescribed, no person shall drive or cause or allow to be driven in any public place any motor vehicle which is not fitted with pneumatic tyres.

(3) No person shall drive or cause or allow to be driven in any public place any motor vehicle or trailer—

- (a) the unladen weight of which exceeds the unladen weight specified in the certificate of registration of the vehicle, or
- (b) the laden weight of which exceeds the registered laden weight specified in the certificate of registration, or
- (c) any axle weight of which exceeds the maximum axle weight specified for that axle in the certificate of registration.

(4) Where the driver or person in charge of a motor vehicle or trailer driven in contravention of sub-section (2) or clause (a) of sub-section (3) is not the owner, a Court may presume that the offence was committed with the knowledge of or under the orders of the owner of the motor vehicle or trailer.

*(Chapter VI.—Control of Traffic.)*

73. Any person authorised in this behalf by the Provincial Government may, if he has reason to believe that a goods vehicle or trailer is being used in contravention of section 72, require the driver to convey the vehicle to a weighing device, if any, within a distance of one mile from any point on the forward route or within a distance of five miles from the destination of the vehicle for weighment; and if on such weighment the vehicle is found to contravene in any respect the provisions of section 72 regarding weight, he may, by order in writing, direct the driver to convey the vehicle or trailer to the nearest place, to be specified in the notice, where facilities exist for the storage of goods, and not to remove the vehicle or trailer from that place until the laden weight or axle weight has been reduced or the vehicle has otherwise been treated so that it complies with section 72.

Power to have  
vehicle weigh-  
ed.

74 The Provincial Government or any authority authorised in this behalf by the Provincial Government, if satisfied that it is necessary in the interests of public safety or convenience, or because of the nature of any road or bridge, may by notification in the official Gazette prohibit or restrict, subject to such exceptions and conditions as may be specified in the notification, the driving of motor vehicles or of any specified class of motor vehicles or the use of trailers either generally in a specified area or on a specified road.

Power to res-  
trict the use of  
vehicles.

75. (1) The Provincial Government or any authority authorised in this behalf by the Provincial Government may cause or permit traffic signs to be placed or erected in any public place for the purpose of regulating motor vehicle traffic.

Power to erect  
traffic signs.

(2) Traffic signs erected under sub-section (1) for any purpose for which provision is made in the Ninth Schedule shall be of the size, colour and type and shall have the meanings set forth in the Ninth Schedule, but the Provincial Government or any authority empowered in this behalf by the Provincial Government may make or authorise the addition to any sign set forth in the said Schedule of transcriptions of the words, letters or figures thereon in such script as the Provincial Government may think fit, provided that the transcriptions shall be of similar size and colour to the words, letters or figures set forth in the Ninth Schedule.

## (Chapter VI.—Control of Traffic.)

(3) Except as provided by sub-section (1) no traffic sign shall, after the commencement of this Act, be placed or erected on or near any road; but all traffic signs erected prior to the commencement of this Act by any competent authority shall for the purposes of this Act be deemed to be traffic signs erected under the provisions of sub-section (1).

(4) A Provincial Government may, by notification in the official Gazette, empower any District Magistrate or Superintendent of Police to remove or cause to be removed any sign or advertisement which is so placed in his opinion as to obscure any traffic sign from view or any sign or advertisement which is in his opinion so similar in appearance to a traffic sign as to be misleading.

Parking places  
and halting  
stations.

76. The Provincial Government or any authority authorised in this behalf by the Provincial Government may, in consultation with the local authority having jurisdiction in the area concerned, determine places at which motor vehicles may stand either indefinitely or for a specified period of time, and may determine the places at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers.

Main roads.

77. A Provincial Government or any authority authorised in this behalf by the Provincial Government may, by notification in the official Gazette or by the erection at suitable places of the appropriate traffic sign referred to in Part A of the Ninth Schedule, designate certain roads as main roads for the purposes of the regulations contained in the Tenth Schedule.

Duty to obey  
traffic signs

78. Every driver of a motor vehicle shall drive the vehicle in conformity with any indication given by a traffic sign included in Part A of the Ninth Schedule and in conformity with the driving regulations set forth in the Tenth Schedule, and shall comply with all directions given him by any police officer for the time being engaged in the regulation of traffic in any public place.

Signals and  
signalling  
devices.

79. The driver of a motor vehicle shall on the occasions specified in the Eleventh Schedule make the signals specified therein:

Provided that the signal of an intention to turn to the right or left or to stop may be given by a mechanical or an electrical device of a prescribed nature affixed to the vehicle.

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80. No person shall drive or cause or allow to be driven in any public place any motor vehicle with a left hand steering control unless it is equipped with a mechanical or electrical signalling device of a prescribed nature and in working order.

Vehicles with left hand control.

81. No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to remain at rest on any road in such a position or in such a condition or in such circumstances as to cause or be likely to cause danger, obstruction or undue inconvenience to other users of the road.

Leaving vehicle in dangerous position.

82. No person driving or in charge of a motor vehicle shall carry any person or permit any person to be carried on the running board or otherwise than within the body of the vehicle.

Riding on running board.

83. No person driving a motor vehicle shall allow any person to stand or sit or anything to be placed in such a manner or position as to hamper the driver in his control of the vehicle.

Obstruction of driver.

84. No person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place, unless there is in the driver's seat a person duly licensed to drive the vehicle or unless the mechanism has been stopped and a brake or brakes applied or such other measures taken as to ensure that the vehicle cannot accidentally be put in motion in the absence of the driver.

Stationary vehicles.

85. No driver of a two-wheeled motor cycle shall carry more than one person in addition to himself on the cycle and no such person shall be carried otherwise than sitting on a proper seat securely fixed to the cycle behind the driver's seat.

Pillion riding.

86. (1) The driver of a motor vehicle in any public place shall, on demand by any police officer in uniform, produce his licence for examination.

Duty to produce licence and certificate of registration.

(2) The owner of a motor vehicle, or in his absence the driver or other person in charge of the vehicle, shall, on demand by a registering authority or any person authorised in this behalf by the Provincial Government, produce the certificate of registration of the vehicle and, where the vehicle is a transport vehicle, the certificate of fitness referred to in section 38.

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(3) If the licence or certificates, as the case may be, are not at the time in the possession of the person to whom demand is made, it shall be a sufficient compliance with this section if such person produces the licence or certificates within ten days at any police station in British India which he specifies to the police officer or authority making the demand:

Provided that, except to such extent and with such modifications as may be prescribed, the provisions of this sub-section shall not apply to a driver driving as a paid employee, or to the driver of a transport vehicle or to any person required to produce the certificate of registration or the certificate of fitness of a transport vehicle.

Duty of driver  
to stop in  
certain cases.

87. (1) The driver of a motor vehicle shall cause the vehicle to stop and remain stationary so long as may reasonably be necessary—

- (a) when required to do so by any police officer in uniform, or
- (b) when required to do so by any person in charge of an animal if such person apprehends that the animal is, or being alarmed by the vehicle will become, unmanageable, or
- (c) when the vehicle is involved in the occurrence of an accident to a person, animal or vehicle or of damage to any property, whether the driving or management of the vehicle was or was not the cause of the accident or damage,

and he shall give his name and address and the name and address of the owner of the vehicle to any person affected by any such accident or damage who demands it provided such person also furnishes his name and address.

(2) The driver of a motor vehicle shall, on demand by a person giving his own name and address and alleging that the driver has committed an offence punishable under section 116, give his name and address to that person.

(3) In this section the expression "animal" means any horse, cattle, elephant, camel, ass, mule, sheep or goat.

Duty of owner  
of motor vehicle  
to give  
information.

88. The owner of a motor vehicle the driver of which is accused of any offence under this Act shall, on the demand of any police officer authorised in this behalf by the Provincial Government, give all information regarding the name and address of and the

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licence held by the driver which is in his possession or could by reasonable diligence be ascertained by him.

89. When any person is injured as the result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall—

*Duty of driver in case of accident and injury to a person.*

- (a) take all reasonable steps to secure medical attention for the injured person, and, if necessary, convey him to the nearest hospital, unless the injured person or his guardian, in case he is a minor, desires otherwise;
- (b) give on demand by a police officer any information required by him, or, if no police officer is present, report the circumstances of the occurrence at the nearest police station as soon as possible, and in any case within twenty-four hours of the occurrence.

90. When any accident occurs in which a motor vehicle is involved, any person authorised in this behalf by the Provincial Government may, on production if so required of his authority, inspect the vehicle and for that purpose may enter at any reasonable time any premises where the vehicle may be, and may remove the vehicle for examination:

*Inspection of vehicle involved in accident.*

Provided that the place to which the vehicle is so removed shall be intimated to the owner of the vehicle and the vehicle shall be returned without unnecessary delay.

91. (1) The Provincial Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

*Power to make rules.*

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the nature of the mechanical or electrical signalling devices which may be used on motor vehicles;
- (b) the removal and the safe custody of vehicles including their loads which have broken down or which have been left standing or have been abandoned on roads;
- (c) the installation and use of weighing devices;



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Motor Vehicles temporarily leaving or visiting  
British India.)

- (d) the exemption from all or any of the provisions of this Chapter of Fire Brigade vehicles, ambulances and other special classes of vehicle, subject to such conditions as may be prescribed;
- (e) the maintenance and management of parking places and stands and the fees, if any, which may be charged for their use;
- (f) prohibiting the driving down hill of a motor vehicle with the gear disengaged either generally or in a specified place;
- (g) prohibiting the taking hold of or mounting of a motor vehicle in motion;
- (h) prohibiting the use of foot paths or pavements by motor vehicles;
- (i) generally, the prevention of danger, injury or annoyance to the public or any person, or of danger or injury to property or of obstruction to traffic; and
- (j) any other matter which is to be or may be prescribed.

## CHAPTER VII.

### MOTOR VEHICLES TEMPORARILY LEAVING OR VISITING BRITISH INDIA.

Power of Central Government to make rules.

92. (1) The Central Government may, by notification in the official Gazette, make rules for all or any of the following purposes, namely:—

- (a) the grant and authentication of travelling passes, certificates or authorisations to persons temporarily taking motor vehicles out of British India to any place outside India or to persons temporarily proceeding out of British India to any place outside India and desiring to drive a motor vehicle during their absence from British India;
- (b) prescribing the conditions subject to which motor vehicles brought temporarily into British India from outside India by persons intending to make a temporary stay in British India may be possessed and used in British India; and
- (c) prescribing the conditions subject to which persons entering British India from any place

(Chapter VII.—*Motor Vehicles temporarily leaving or visiting British India.* Chapter VIII.—*Insurance of Motor Vehicles against Third Party Risks.*)

outside India for a temporary stay in British India may drive motor vehicles in British India.

(2) No rule made under this section shall operate to confer on any person any immunity in any province from the payment of any tax levied in that province on motor vehicles or their users.

(3) Rules made under clauses (b) and (c) of sub-section (1) shall, in case of motor vehicles and persons entering British India from the French and Portuguese Settlements bounded by India, be applicable only to motor traffic to which the International Convention relating to motor traffic concluded at Paris on the 24th day of April, 1926, applies.

(4) Nothing in this Act or in any rule made thereunder by a Provincial Government relating to—

- (a) the registration and identification of motor vehicles, or
- (b) the requirements as to construction, maintenance and equipment of motor vehicles, or
- (c) the licensing and the qualifications of drivers of motor vehicles

shall apply to any motor vehicle to which or to any driver of a motor vehicle to whom any rules made under clause (b) or clause (c) of sub-section (1) apply.

## CHAPTER VIII.

### INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY RISKS.

93. In this Chapter—

Definitions.

- (a) “authorised insurer” means an insurer in whose case the requirements of the Insurance Act, 1938, with respect to the registration of and deposits by insurers are complied with, and
- (b) “certificate of insurance” means a certificate issued by an authorised insurer in pursuance of sub-section (4) of section 95; and includes where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be.

(Chapter VIII.—Insurance of Motor Vehicles against Third Party Risks.)

Necessity for insurance against third party risk.

94. (1) No person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter.

*Explanation.*—A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.

(2) This section shall not apply to any vehicle owned by or on behalf of the Central Government or a Provincial Government or a local authority notified in this behalf by the Provincial Government, or a State-owned railway, at any time when the vehicle is driven by a servant of the owner in the course of his employment, or is otherwise subject to the control of the owner.

Requirements of policies and limits of liability.

95. (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

- (a) is issued by a person who is an authorised insurer, and
- (b) insures the person or classes of person specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not, except as may be otherwise provided under sub-section (3), be required—

- (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment, or
- (ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being

*(Chapter VIII.—Insurance of Motor Vehicles against Third Party Risks.)*

carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability.

(2) Subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely:—

- (a) where the vehicle is a vehicle used or adapted to be used for the carriage of goods, a limit of twenty thousand rupees;
- (b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, in respect of persons other than passengers carried for hire or reward, a limit of twenty thousand rupees; and in respect of passengers a limit of twenty thousand rupees in all, and four thousand rupees in respect of an individual passenger, if the vehicle is registered to carry not more than six passengers excluding the driver or two thousand rupees in respect of an individual passenger, if the vehicle is registered to carry more than six passengers excluding the driver;
- (c) where the vehicle is a vehicle of any other class the amount of the liability incurred.

(3) A Provincial Government may prescribe that a policy of insurance shall in order to comply with the requirements of this Chapter cover any liability arising under the provisions of the Workmen's Compensation Act, 1923, in respect of the death of or bodily injury to any paid employee engaged in driving or otherwise in attendance on or being carried in a motor vehicle.

VIII of 1923.

(4) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance or a cover note in the prescribed form and containing the prescribed particulars of any conditions subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance

(Chapter VIII.—Insurance of Motor Vehicles against Third Party Risks.)

under this section shall be liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of person.

Duty of insurers to satisfy judgments against persons insured in respect of third party risks.

96. (1) If, after a certificate of insurance or a cover note has been issued under sub-section (4) of section 95 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the Court of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—

- (a) that the policy was cancelled by mutual consent or by virtue of any provision contained therein before the accident giving rise to the liability, and that either the certificate of insurance was surrendered to the insurer or that the person to whom the certificate was issued has made an affidavit stating that the certificate has been lost or destroyed, or that either before or not later than fourteen days after the happening of the accident the insurer has commenced proceedings for cancellation of the certificate after compliance with the provisions of section 105; or

(Chapter VIII.—*Insurance of Motor Vehicles against Third Party Risks.*)

- (b) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely—
- (i) a condition excluding the use of the vehicle—
    - (a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or
    - (b) for organised racing and speed testing, or
    - (c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a public service vehicle or a goods vehicle, or
    - (d) without side-car being attached, where the vehicle is a motor cycle; or
  - (ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or
  - (iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or
- (c) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where a certificate of insurance or cover note has been issued under sub-section (4) of section 95 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 95, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(4) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the

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amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(5) In this section the expressions “material fact” and “material particular” mean, respectively, a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression “liability covered by the terms of the policy” means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(6) No insurer to whom the notice referred to in sub-section (2) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment as is referred to in sub-section (1) otherwise than in the manner provided for in sub-section (2).

Rights of third parties against insurers on insolvency of the insured.

97. (1) Where under any contract of insurance effected in accordance with the provisions of this Chapter a person is insured against liabilities which he may incur to third parties then—

- (a) in the event of the person becoming insolvent or making a composition or arrangement with his creditors, or
- (b) where the insured person is a company, in the event of a winding up order being made or a resolution for a voluntary winding up being passed with respect to the company or of a receiver or manager of the company's business or undertaking being duly appointed, or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge,

if, either before or after that event, any such liability is incurred by the insured person, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Where an order for the administration of the estate of a deceased debtor is made according to the

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law of insolvency, then, if any debt provable in insolvency is owing by the deceased in respect of a liability to a third party against which he was insured under a contract of insurance in accordance with the provisions of this Chapter, the deceased debtor's rights against the insurer in respect of that liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the person to whom the debt is owing.

(3) Any condition in a policy issued for the purposes of this Chapter purporting either directly or indirectly to avoid the policy or to alter the rights of the parties thereunder upon the happening to the insured person of any of the events specified in clause (a) or clause (b) of sub-section (1) or upon the making of an order for the administration of the estate of a deceased debtor according to the law of insolvency shall be of no effect.

(4) Upon a transfer under sub-section (1) or sub-section (2) the insurer shall be under the same liability to the third party as he would have been to the insured person, but—

- (a) if the liability of the insurer to the insured person exceeds the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the insured person against the insurer in respect of the excess, and
- (b) if the liability of the insurer to the insured person is less than the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the third party against the insured person in respect of the balance.

98. (1) No person against whom a claim is made in respect of any liability referred to in clause (b) of sub-section (1) of section 95 shall on demand by or on behalf of the person making the claim refuse to state whether or not he was insured in respect of that liability by any policy issued under the provisions of this Chapter, or would have been so insured if the insurer had not avoided or cancelled the policy, nor shall he refuse, if he was or would have been so insured, to give such particulars with respect to that policy as were specified in the certificate of insurance issued in respect thereof.

Duty to give  
information  
as to insu-  
rance.



(Chapter VIII.—Insurance of Motor Vehicles against Third Party Risks.)

(2) In the event of any person becoming insolvent or making a composition or arrangement with his creditors or in the event of an order being made for the administration of the estate of a deceased person according to the law of insolvency, or in the event of a winding up order being made or a resolution for a voluntary winding up being passed with respect to any company or of a receiver or manager of the company's business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge on any property comprised in or subject to the charge, it shall be the duty of the insolvent debtor, personal representative of the deceased debtor or company, as the case may be, or the official assignee or receiver in insolvency, trustee, liquidator, receiver or manager, or person in possession of the property to give at the request of any person claiming that the insolvent debtor, deceased debtor or company is under such liability to him as is covered by the provisions of this Chapter, such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by section 97, and for the purpose of enforcing such rights, if any; and any such contract of insurance as purports whether directly or indirectly to avoid the contract or to alter the rights of the parties thereunder upon the giving of such information in the events aforesaid, or otherwise to prohibit or prevent the giving thereof in the said events, shall be of no effect.

(3) If, from the information given to any person in pursuance of sub-section (2) or otherwise, he has reasonable ground for supposing that there have or may have been transferred to him under this Chapter rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by the said sub-section on the persons therein mentioned.

(4) The duty to give the information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums, and other relevant documents in the possession or power of the person on whom the duty is so imposed to be inspected and copies thereof to be taken.

99. (1) No settlement made by an insurer in respect of any claim which might be made by a third party in respect of any liability of the nature referred to in

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clause (b) of sub-section (1) of section 95 shall be valid unless such third party is a party to the settlement.

(2) Where a person who is insured under a policy issued for the purposes of this Chapter has become insolvent, or where, if such insured person is a company, a winding up order has been made or a resolution for a voluntary winding up has been passed with respect to the company no agreement made between the insurer and the insured person after liability has been incurred to a third party and after the commencement of the insolvency or winding up, as the case may be, nor any waiver, assignment or other disposition made by or payment made to the insured person after the commencement aforesaid shall be effective to defeat the rights transferred to the third party under this Chapter, but those rights shall be the same as if no such agreement, waiver, assignment or disposition or payment has been made.

**100.** (1) For the purposes of sections 97, 98 and 99, a reference to "liabilities to third parties" in relation to a person insured under any policy of insurance shall not include a reference to any liability of that person in the capacity of insurer under some other policy of insurance.

*Saving in respect of sections 97 and 99.* 98

(2) The provisions of sections 97, 98 and 99 shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of an amalgamation with another company.

**101.** Where a certificate of insurance has been issued to the person by whom a policy has been effected, the happening in relation to any person insured by the policy of any such event as is mentioned in sub-section (1) or sub-section (2) of section 97 shall, notwithstanding anything in this Chapter, not affect any liability of that person of the nature referred to in clause (b) of sub-section (1) of section 95; but nothing in this section shall affect any rights against the insurer conferred under the provisions of sections 97, 98 and 99 on the person to whom the liability was incurred.

*Insolvency of insured persons not to affect liability of insured or claims by third parties.*

**102.** Notwithstanding anything contained in section 306 of the Indian Succession Act, 1925, the death of a person in whose favour a certificate of insurance or cover note had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a

*Effect of death on certain causes of action.*

(Chapter VIII.—Insurance of Motor Vehicles against Third Party Risks.)

bar to the survival of any cause of action arising out of the said event against his estate or against the insurer.

Effect of  
certificate of  
insurance.

103. When an insurer has issued a certificate of insurance in respect of a contract of insurance between the insurer and the insured person, then—

- (a) if and so long as the policy described in the certificate has not been issued by the insurer to the insured, the insurer shall, as between himself and any other person except the insured, be deemed to have issued to the insured person a policy of insurance conforming in all respects with the description and particulars stated in such certificate; and
- (b) if the insurer has issued to the insured the policy described in the certificate, but the actual terms of the policy are less favourable to persons claiming under or by virtue of the policy against the insurer either directly or through the insured than the particulars of the policy as stated in the certificate, the policy shall, as between the insurer and any other person except the insured, be deemed to be in terms conforming in all respects with the particulars stated in the said certificate.

Duty to  
surrender  
certificate on  
cancellation of  
policy.

104. (1) Whenever the period of cover under a policy of insurance issued under the provisions of this Chapter is terminated or suspended by any means before its expiration by effluxion of time, the insured person shall within seven days after such termination or suspension deliver to the insurer by whom the policy was issued the latest certificate of insurance given by the insurer in respect of the said policy, or, if the said certificate has been lost or destroyed, make an affidavit to that effect.

(2) Whoever fails to surrender a certificate of insurance or to make an affidavit, as the case may be, in accordance with the provisions of this section shall be punishable with fine which may extend to fifteen rupees for every day that the offence continues subject to a maximum of five hundred rupees.

Duty of in-  
surer to notify  
registering  
authority  
cancellation  
or suspension  
of the policy.

105. Whenever a policy of insurance issued under the provisions of this Chapter is cancelled or suspended by the insurer who has issued the policy, the insurer shall within seven days notify such cancellation or

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suspension to the registering authority in whose records the registration of the vehicle covered by the policy of insurance is recorded or to such other authority as the Provincial Government may prescribe.

106. (1) Any person driving a motor vehicle in any public place shall on being so required by a police officer in uniform produce the certificate of insurance relating to the use of the vehicle: Production of certificate of insurance.

Provided that if the driver of a motor vehicle within seven days from the date on which the production of the certificate of insurance was so required produces the certificate at such police station as may have been specified by him at the time its production was required he shall not be liable to conviction under this sub-section by reason only of failure to produce the certificate to the police officer.

(2) If, where owing to the presence of a motor vehicle in a public place an accident occurs involving bodily injury to another person, the driver of the vehicle does not at the time produce the certificate of insurance to a police officer, he shall produce the certificate of insurance at the police station at which he makes the report required by section 89 :

Provided that no person shall be liable to conviction under this sub-section by reason only of failure to produce his certificate of insurance if within seven days from the occurrence of the accident he produces the certificate at such police station as may be specified by him to the police officer at the site of the accident or to the officer in charge of the police station at which he reported the accident.

(3) The owner of a motor vehicle shall give such information as he may be required by or on behalf of a police officer empowered in this behalf by the Provincial Government to give for the purpose of determining whether the vehicle was or was not being driven in contravention of section 94 and on any occasion when the driver was required under this section to produce his certificate of insurance.

(4) In this section the expression "produce his certificate of insurance" means produce for examination the relevant certificate of insurance or such other evidence as may be prescribed that the vehicle was not being driven in contravention of section 94.

## (Chapter VIII.—Insurance of Motor Vehicles against Third Party Risks.)

Production of certificates of insurance on application for authority to use vehicle.

107. A Provincial Government may make rules requiring the owner of any motor vehicle when applying whether by payment of a tax or otherwise for authority to use the vehicle in a public place to produce such evidence as may be prescribed by those rules to the effect that either—

- (a) on the date when the authority to use the vehicle comes into operation there will be in force the necessary policy of insurance in relation to the use of the vehicle by the applicant or by other persons on his order or with his permission, or
- (b) the vehicle is a vehicle to which section 94 does not apply.

Co-operative Insurance.

108. (1) A Provincial Government may, on the application of a co-operative society of public service vehicle owners registered or deemed to have been registered under the Co-operative Societies Act, 1912, or under an Act of a Provincial Legislature governing the registration of Co-operative Societies and subject to the control of the Registrar of Co-operative Societies of the province, allow the society to transact the business of an insurer for the purposes of this Chapter as if the society were an authorised insurer, subject to the following conditions, namely:—

- (a) the society shall establish and maintain a fund of not less than twenty-five thousand rupees for the first fifty vehicles or fractional part thereof and *pro rata* for every additional vehicle in the possession of members of the society and the said fund shall be lodged in such custody as the Provincial Government may prescribe and shall not be available for meeting claims or other expenses except in the event of the winding up of the society;
- (b) the liability of the society shall be limited as specified in clause (b) of sub-section (2) of section 95;
- (c) the society shall, if required by the Provincial Government, re-insure against claims above a prescribed amount;
- (d) the provisions of this Chapter, in so far as they relate to the protection of third parties

*(Chapter VIII.—Insurance of Motor Vehicles against Third Party Risks.)*

and to the issue and production of certificates, shall apply in respect of any insurance effected by the society;

- (e) an independent authority not associated with the society shall be appointed by the Provincial Government to facilitate and assist in the settling of claims against the society;
- (f) the society shall operate on an insurance basis, that is to say,—
  - (i) it shall levy its premiums in respect of a period not exceeding twelve months, during which period the insured shall be held covered in respect of all accidents arising, subject to the limits of liability specified in clause (b) of sub-section (2) of section 95;
  - (ii) it shall charge premiums estimated to be sufficient, having regard to the risks, to meet the capitalised value of all claims arising during the period of cover, together with an adequate charge for expenses attaching to the issue of policies and to the settlement of claims arising thereunder;
- (g) the society shall furnish to the Superintendent of Insurance the returns required to be furnished by insurers under the provisions of the Insurance Act, 1938, and the Superintendent of Insurance may exercise in respect thereof any of the powers exercisable by him in respect of returns made to him under the said Act; and
- (h) any provisions of law applicable to the winding up of authorised insurers shall be equally applicable to the society.

IV of 1938.

IV of 1938.

(2) Except as provided in sub-section (1), the Insurance Act, 1938, shall not apply to any co-operative society of public service vehicle owners allowed to transact the business of an insurer under this section.

109. A registering authority or the officer in charge of a police station shall, if so required by a person who alleges that he is entitled to claim compensation in respect of an accident arising out of the use of a motor vehicle, or if so required by an insurer against whom a claim has been made in respect of any motor vehicle, furnish to that person or to that insurer, as

Duty to furnish particulars of vehicle involved in accident.

(Chapter VIII.—Insurance of Motor Vehicles against Third Party Risks.)

the case may be, on payment of the prescribed fee any information at the disposal of the said authority or the said police officer relating to the identification marks and other particulars of the vehicle and the name and address of the person who was using the vehicle at the time of the accident or was injured by it.

Power to appoint persons to investigate and report on accidents.

110. A Provincial Government may, by notification in the official Gazette, appoint a person or a body of persons to investigate and report on accidents involving the death of or bodily injury to any person arising out of the use of motor vehicles and the extent to which their claims to compensation have been satisfied and to advise and assist such persons or their representatives in presenting their claims for compensation :

Provided that nothing in this section shall confer on any such person or body of persons the right to adjudicate in any way on the liability of the insurer or on the amount of damages to be awarded except at the express desire of the insurer concerned.

Power to make rules.

111. (1) The Central Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the forms to be used for the purposes of this Chapter;
- (b) the making of applications for and the issue of certificates of insurance;
- (c) the issue of duplicates to replace certificates of insurance lost or destroyed;
- (d) the custody, production, cancellation and surrender of certificates of insurance;
- (e) the records to be maintained by insurers of policies of insurance issued under this Chapter;
- (f) the identification by certificates or otherwise of persons or vehicles exempted from the provisions of this Chapter;
- (g) the furnishing of information respecting policies of insurance by insurers;
- (h) the carrying into effect of the provisions of section 108;

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(Chapter IX.—*Offences, Penalties and Procedure.*)

- (i) adapting the provisions of this Chapter to vehicles brought into British India by persons making only a temporary stay therein by applying those provisions with prescribed modifications; and
- (j) any other matter which is to be or may be prescribed.

### CHAPTER IX.

#### OFFENCES, PENALTIES AND PROCEDURE.

112.<sup>1</sup> Whoever contravenes any provision of this Act or of any rule made thereunder shall, if no other penalty is provided for the offence, be punishable with fine which may extend to twenty rupees, or, if having been previously convicted of any offence under this Act he is again convicted of an offence under this Act, with fine which may extend to one hundred rupees.

General provision for punishment of offence.

113.<sup>1</sup> Whoever wilfully disobeys any direction lawfully given by any person or authority empowered under this Act to give such direction, or obstructs any person or authority in the discharge of any functions which such person or authority is required or empowered under this Act to discharge, or, being required by or under this Act to supply any information, withholds such information or gives information which he knows to be false or which he does not believe to be true, shall, if no other penalty is provided for the offence, be punishable with fine which may extend to two hundred rupees.

Disobedience of orders, obstruction and refusal of information.

114. Whoever, being disqualified under this Act for holding or obtaining a licence, drives a motor vehicle in a public place or applies for or obtains a licence or, not being entitled to have a licence issued to him free of endorsement, applies for or obtains a licence without disclosing the endorsements made on a licence previously held by him or, being disqualified under this Act for holding or obtaining a licence, uses in British India a licence such as is referred to in subsection (2) of section 9, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both, and any licence so obtained by him shall be of no effect.

Offences relating to licences.

<sup>1</sup> For special mode of construction with reference to rules made under the Indian Motor Vehicles Act, 1914, see s. 134 (5) *infra*.



*(Chapter IX.—Offences, Penalties and Procedure.)*

Driving at  
excessive  
speed.

115. (1) Whoever drives a motor vehicle in contravention of section 71 shall be punishable with fine which may extend to one hundred rupees.

(2) Whoever causes any person who is employed by him or is subject to his control in driving to drive a motor vehicle in contravention of section 71 shall be punishable with fine which may extend to two hundred rupees.

(3) No person shall be convicted of an offence punishable under sub-section (1) solely on the evidence of one witness to the effect that in the opinion of the witness such person was driving at a speed which was unlawful, unless that opinion is shown to be based on an estimate obtained by the use of some mechanical timing device.

(4) The publication of a time table under which, or the giving of any direction that, any journey or part of a journey is to be completed within a specified time shall, if in the opinion of the Court it is not practicable in the circumstances of the case for that journey or part of a journey to be completed in the specified time without infringing the provisions of section 71, be *prima facie* evidence that the person who published the time table or gave the direction has committed an offence punishable under sub-section (2).

Driving  
recklessly or  
dangerously.

116. Whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable on a first conviction for the offence with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, and for a subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Driving while  
under the  
influence of  
drink or drugs.

117. Whoever while driving or attempting to drive a motor vehicle is under the influence of drink or a drug to such an extent as to be incapable of exercising proper control over the vehicle, shall be punishable for a first offence with imprisonment for a term which may extend to three months, or with fine which may

*(Chapter IX.—Offences, Penalties and Procedure.)*

extend to five hundred rupees, or with both, and for a subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

118. Whoever drives a motor vehicle in any public place when he is to his knowledge suffering from any disease or disability calculated to cause his driving of the vehicle to be a source of danger to the public, shall be punishable for a first offence with fine which may extend to two hundred rupees and for a second or subsequent offence with fine which may extend to five hundred rupees.

*Driving when mentally or physically unfit to drive.*

119. Whoever abets the commission of an offence under section 116, 117 or 118, shall be punishable with the punishment provided for the offence.

*Punishment for abetment of certain offences.*

120. Whoever without the written consent of the Provincial Government permits or takes part in a race or trial of speed between motor vehicles in any public place shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to three hundred rupees, or with both.

*Racing and trials of speed.*

121. Any person who drives or causes or allows to be driven in any public place a motor vehicle or trailer while the vehicle or trailer has any defect, which such person knows of or could have discovered by the exercise of ordinary care and which is calculated to render the driving of the vehicle a source of danger to persons and vehicles using such place, shall be punishable with fine which may extend to two hundred and fifty rupees or, if as a result of such defect an accident is caused causing bodily injury or damage to property, with fine which may extend to five hundred rupees.

*Using vehicle in unsafe condition.*

122. Whoever, being an importer of or dealer in motor vehicles, sells or delivers or offers to sell or deliver a motor vehicle or trailer in such condition that the use thereof in a public place would be in contravention of Chapter V or any rule made thereunder or alters the motor vehicle or trailer so as to render its condition such that its use in a public place would be in contravention of Chapter V or any rule made thereunder shall be punishable with fine which may extend to two hundred rupees :

*Sale of vehicle in or alteration of vehicle to a condition contravening this Act.*

*(Chapter IX.—Offences, Penalties and Procedure.)*

Provided that no person shall be convicted under this section if he proves that he had reasonable cause to believe that the vehicle would not be used in a public place until it had been put into a condition in which it might lawfully be so used.

Using vehicle  
without  
permit.

**123.** (1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used or lets out a motor vehicle for use in contravention of the provisions of sub-section (1) of section 42 shall be punishable for a first offence with fine which may extend to five hundred rupees, and for a subsequent offence if committed within three years of the commission of a previous similar offence with a fine which shall not be less than one hundred rupees and may extend to one thousand rupees.

(2) Nothing in this section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injury or for the transport of materials for repair or of food or materials to relieve distress or of medical supplies for a like purpose:

Provided that the person using the vehicle reports such use to the Regional Transport Authority within seven days.

Driving  
vehicle ex-  
ceeding per-  
missible  
weight.

**124.** Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 72 or of the conditions of any permit issued thereunder, or in contravention of any prohibition or restriction imposed under section 74 shall be punishable for a first offence with fine which may extend to one hundred rupees, and for a second or subsequent offence with fine which may extend to five hundred rupees.

Driving  
uninsured  
vehicle.

**125.** Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 94 shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Taking  
vehicle  
without  
authority.

**126.** Whoever takes and drives away any motor vehicle without having either the consent of the owner thereof or other lawful authority shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both:

(Chapter IX.—*Offences, Penalties and Procedure.*)

Provided that no accused person shall be convicted under this section if the Court is satisfied that the accused acted in the reasonable belief that he had lawful authority or in the reasonable belief that the owner would in the circumstances of the case have given his consent if he had been asked therefor.

127. Whoever otherwise than with lawful authority or reasonable excuse enters or mounts any stationary motor vehicle or tampers with the brake or any part of the mechanism of a motor vehicle shall be punishable with fine which may extend to one hundred rupees.

Unauthorised  
interference  
with vehicle.

128. (1) A police officer in uniform may arrest without warrant any person who commits in his view an offence punishable under section 116 or section 117 or section 126:

Power of  
arrest  
without  
warrant.

Provided that any person so arrested in connection with an offence punishable under section 117 shall be subjected to a medical examination by a registered medical practitioner within two hours of his arrest or shall then be released from custody.

(2) A police officer in uniform may arrest without warrant—

- (a) any person who being required under the provisions of this Act to give his name and address refuses to do so, or gives a name or address which the police officer has reason to believe to be false, or
- (b) any person concerned in an offence under this Act or reasonably suspected to have been so concerned, if the police officer has reason to believe that he will abscond or otherwise avoid the service of a summons.

(3) A police officer arresting without warrant the driver of a motor vehicle shall, if the circumstances so require, take or cause to be taken any steps he may consider proper for the temporary disposal of the vehicle.

129. (1) Any police officer authorised in this behalf or other person authorised in this behalf by the Provincial Government may, if he has reason to believe that any identification mark carried on a motor vehicle or any licence, permit, certificate of registration, certificate of insurance or other document produced to him by the driver or person in charge of a motor vehicle is a false document within the meaning of section 464 of the Indian Penal Code, seize the mark or document

Power of  
police officer  
to impound  
document.

(Chapter IX.—Offences, Penalties and Procedure.)

and call upon the driver or owner of the vehicle to account for his possession of or the presence in the vehicle of such mark or document.

(2) Any police officer authorised in this behalf by the Provincial Government may, if he has reason to believe that the driver of a motor vehicle who is charged with any offence under this Act may abscond or otherwise avoid the service of a summons, seize any licence held by such driver and forward it to the Court taking cognizance of the offence.

(3) A police officer seizing a licence under sub-section (2) shall give to the person surrendering the licence a temporary acknowledgment therefor and such acknowledgment shall authorise the holder to drive until the licence has been returned to him or the Court has otherwise ordered.

Summary  
disposal of  
cases.

**130.** (1) A Court taking cognizance of an offence under this Act may, unless the offence is an offence specified in Part A of the Fifth Schedule, state upon the summons to be served on the accused person that he—

- (a) may appear by pleader and not in person, or
- (b) may by a specified date prior to the hearing of the charge plead guilty to the charge by registered letter and remit to the Court such sum not exceeding twenty-five rupees as the Court may specify.

(2) Where the offence dealt with in accordance with sub-section (1) is an offence specified in Part B of the Fifth Schedule, the accused person shall, if he pleads guilty to the charge, forward his licence to the Court with the letter containing his plea in order that the conviction may be endorsed on the licence.

(3) Where an accused person pleads guilty and remits the sum specified and has complied with the provisions of sub-section (2), no further proceedings in respect of the offence shall be taken against him, nor shall he be liable to be disqualified for holding or obtaining a licence by reason of his having pleaded guilty.

Restriction  
on conviction.

**131.** No person prosecuted for an offence punishable under section 115 or section 116 shall be convicted unless—

- (a) he was warned at the time the offence was committed that the question of prosecuting him would be taken into consideration, or

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- (b) within fourteen days from the commission of the offence, a notice specifying the nature of the offence and the time and place where it is alleged to have been committed was served on or sent by registered post to him or the person registered as the owner of the vehicle at the time of the commission of the offence, or
- (c) within twenty-eight days of the commission of the offence, a summons for the offence was served on him :

Provided that nothing in this section shall apply where the Court is satisfied that—

- (a) the failure to serve the notice or summons referred to in this sub-section was due to the fact that neither the name and address of the accused nor the name and address of the registered owner of the vehicle could with reasonable diligence have been ascertained in time, or
- (b) such failure was brought about by the conduct of the accused.

132. No Court inferior to that of a Presidency <sup>Jurisdiction</sup> Magistrate or a Magistrate of the second class shall try any offence punishable under this Act or any rule made thereunder. <sup>of Courts.</sup>

## CHAPTER X.

### MISCELLANEOUS.

133. (1) Every power to make rules given by this Act is subject to the condition of the rules being made <sup>Publication of</sup> after previous publication. <sup>and commence-</sup>

(2) All rules made under this Act shall be published in the official Gazette, and shall, unless some later date is appointed, come into force on the date of such publication.

(3) All rules made under this Act by the Central Government or by any Provincial Government shall be laid for not less than fourteen days before the Central or Provincial Legislature, as the case may be, as soon as possible after they are made, and shall be subject to such modifications as the Legislature may make during the session in which they are so laid.

✓ III of 1914. 134. (1) The Indian Motor Vehicles Act, 1914, is <sup>Repeal</sup> hereby repealed.

## (Chapter X.—Miscellaneous.)

<sup>1</sup>[(2) Notwithstanding the repeal of the Indian Motor Vehicles Act, 1914, rules made by any Provincial Government under section 11 of that Act, other than rules prescribing the fees payable in respect of the grant or renewal of licences to drive motor vehicles, shall, whether or not they are consistent with this Act but subject to the provisions of sub-section (3) of this section, continue to be in force for a period of nine months from the commencement of this Act, unless before the expiry of that period they are cancelled by the Provincial Government by notification in the official Gazette];

(3) Notwithstanding the repeal of the Indian Motor Vehicles Act, 1914, rules made or purporting to be made by a Provincial Government under sub-section (2) of section 11 of that Act, requiring or relating to the insurance of motor vehicles, being rules in force at the commencement of this Act, shall, until Chapter VIII of this Act takes effect in the province, have effect as if enacted in this Act. VIII of 1914.

(4) Nothing contained in this Act shall, until the expiry of a period of nine months from the commencement of this Act, operate to invalidate any provisions relating to the taxation of motor vehicles contained in any Provincial enactment or rules made thereunder in force at the commencement of this Act.

<sup>4</sup>[(5) While, under the provisions of sub-section (2), any rules made by a Provincial Government under section 11 of the Indian Motor Vehicles Act, 1914, continue to be in force—

(a) section 112 shall be construed as if after the words “any rule made thereunder” there were inserted the words and figure “or of any rule made under the Indian Motor Vehicles Act, 1914 and continuing in force”, and

(b) section 113 shall be construed as if after the words “under this Act”, wherever they occur, there were inserted the words and figure “or under any rule made under the Indian Motor Vehicles Act, 1914 and continuing in force.”]

<sup>1</sup> Subs. for original sub-section by s. 3 of the Motor Vehicles (Amendment) Act, 1939 (40 of 1939) (with effect from 1st July, 1939).

<sup>4</sup> Ins., *ibid* (with effect from 1st July, 1939).

## (The First Schedule.)

## THE SCHEDULES.

## THE FIRST SCHEDULE.

## FORMS.

## FORM A.

[See section 7 (2).]

*Form of application for licence to drive a motor vehicle.*

## I

*Application.*

I apply for a licence to enable me to drive  
as a paid employee

\*otherwise than as a paid employee

\*vehicles of the following description:—

(a) motor cycles.

(b) motor cars,

(c) invalid carriages,

(d) motor cabs,

(e) delivery vans,

(f) light transport vehicles \*including public service vehicles,  
excluding

(g) heavy transport vehicles \*including public service vehicles,  
excluding

(h) tractors,

(i) road-rollers,

(j) locomotives,

(k) a vehicle of a special type (description attached) constructed or adapted to be driven by me.

\*Strike out whichever inapplicable.

## II

*Particulars to be furnished by the applicant.*

1. Full name and name of father. ....

2. Permanent address. ....

3. Temporary address. ....

4. Age at date of application. ....

5. Particulars of any licence previously held by applicant. ....

6. Particulars and date of every conviction which has been ordered to be endorsed on any licence held by the applicant.

7. Have you been disqualified for obtaining a licence to drive ? If so, for what reason ?

8. Have you been subjected to a driving test as to your fitness or ability to drive a vehicle in respect of which a licence to drive is applied for ? If so, give date, testing authority and result of test.

## III

*Declaration as to physical fitness of applicant.*

The applicant is required to answer "Yes" or "No" in the space provided opposite each question.

(a) Do you suffer from epilepsy, or from sudden attacks of disabling giddiness or fainting ?

(b) Are you able to distinguish with each eye at a distance of 25 yards in good daylight (with glasses, if worn) a motor car number plate containing seven letters and figures ?

(c) Have you lost either hand or foot or are you suffering from any defect in movement, control, or muscular power of either arm or leg ?



- <sup>1</sup>[(d) Can you readily distinguish the pigmentary colours red and green ?  
(e) Do you suffer from night blindness ?]  
<sup>2</sup>[(f)] Do you suffer from a defect of hearing ?  
<sup>2</sup>[(g)] Do you suffer from any other disease or disability likely to cause your driving of a motor vehicle to be a source of danger to the public ?

If so, give particulars.

I declare that to the best of my information and belief the particulars given in Section II and the declaration made in Section III hereof are true.

NOTE.—An applicant who answers “Yes” to questions (b) and (c) in the declaration and “No” to the other questions may claim to be subjected to a test as to his competency to drive vehicles of a specified type or types.

Date.....19 .

*Signature or thumb Impression of applicant.*

*Certificate of test of ability to drive.*

The applicant has passed the test specified in the Third Schedule to the Motor Vehicles Act, 1939. The test was conducted on a \*  
failed in on (date)

*Signature of Testing Authority.*

*Duplicate Signature or thumb Impression of applicant.*

\* Here enter description of vehicle.

FORM B.

[See section 11 (2).]

*Form of application for renewal of driving licence.*

I hereby apply for a renewal of the licence under the Motor Vehicles Act, 1939, which was issued to me on the.....  
by.....(state title of licensing authority).

I hereby declare that I am not subject to any disease or disability likely to cause my driving of a motor vehicle to be a source of danger to the public.

Date.....19 .

*Signature of applicant.*

<sup>1</sup> Subs. for the original question (d) by s. 4 of the Motor Vehicles (Amendment) Act, 1939 (40 of 1939).

<sup>2</sup> Re-lettered, *ibid.*

## (The First Schedule.)

## FORM C.

[See section 7 (3) and section 12.]

*Form of medical certificate in respect of an applicant for a licence to drive any transport vehicle or to drive any vehicle as a paid employee.*

(To be filled up by a registered medical practitioner.)

- What is the applicant's apparent age ? .....
- Is the applicant, to the best of your judgment, subject to epilepsy, vertigo or any mental ailment likely to affect his efficiency ? .....
3. Does the applicant suffer from any heart or lung disorder which might interfere with the performance of his duties as a driver ? .....
4. (a) Is there any defect of vision ?  
If so, has it been corrected by suitable spectacles ? .....
- <sup>1</sup>[(b) Can the applicant readily distinguish the pigmentary colours red and green ? .....
- (c) Does the applicant suffer from night blindness ?] .....
- <sup>2</sup>[(d)] Does the applicant suffer from a degree of deafness which would prevent his hearing the ordinary sound signals ? .....
5. Has the applicant any deformity or loss of members which would interfere with the efficient performance of his duties as a driver ? .....
6. Does he show any evidence of being addicted to the excessive use of alcohol, tobacco or drugs ? .....
7. Is he, in your opinion, generally fit as regards (a) bodily health, and (b) eyesight ? .....
8. Marks of identification. ....
- I certify that to the best of my knowledge and belief the applicant..... is the person hereinabove described and that the attached photograph is a reasonably correct likeness.

(Signature).....

[Space for photograph.]

Name.....

Designation.....

NOTE.—Special attention should be directed to distant vision and to the condition of the arms and hands and the joints of both extremities.

<sup>1</sup> Subs. for the original question (b) by s. 4 of the Motor Vehicles (Amendment) Act, 1939 (40 of 1939).

<sup>2</sup> Re-lettered, *ibid.*

*Motor Vehicles.*  
(*The First Schedule.*)

[1939 Act : IV.]

## FORM D.

[See section 8 (1).]

*Driving Licence.*

No. ....

19....

(Name) .....  
 son/daughter of (father's name).....  
 of (permanent address) .....  
 .....  
 (temporary address).....  
 .....  
 .....

Photograph  
if necessary.

*Signature or thumb impression.*

is licensed to drive, throughout British India, vehicles of the following description :—\*

- (a) Motor cycle.
- (b) Motor car.
- (c) Motor cab.
- (d) Delivery van.
- (e) Light transport vehicle.
- (f) Heavy transport vehicle.
- (g) Locomotive.
- (h) Tractor.
- (i) Invalid carriage.
- (j) Road-roller.
- (k) A motor vehicle hereunder described :—

.....

He is also authorised to drive as a paid employee\*.

This licence is valid from.....to.....

(\*To be struck out if inapplicable.)

*Signature and designation of Licensing  
Authority.*

*Date*.....19

## (The First Schedule.)

*Authorisation to drive a public service vehicle.*

So long as this licence is valid and is renewed from time to time, the holder is authorised to drive a public service vehicle within the province of.....

Date.....19 . Signature and designation of  
prescribed authority.

And within the province of .....

Date.....19 . Signature and designation of  
prescribed authority.

And within the province of .....

Date.....19 . Signature and designation of  
prescribed authority.

This licence is hereby renewed up to Signature of Licensing Authority.

the.....day of....19 . .....

the.....day of....19 . .....

the.....day of....19 . .....

the.....day of....19 . .....

the.....day of....19 . .....

## ENDORSEMENTS.

Date.	Section and Rule.	Fine or other punishment.	Signature of Endorsing Authority.

## FORM E.

[See section 24 (1).]

*Form of Application for the Registration of a Motor Vehicle.*

1. Full name, name of father, and address of person to be registered as registered owner.....
2. Class of vehicle.....
3. Type of body ... ..
4. Maker's name.....
5. Year of manufacture .....
6. Number of cylinders.....
7. Horse power.....
8. Maker's classification or, if not known, wheel-base .....
9. Chassis number.....
10. Engine number.....
11. Seating capacity (including driver).....
12. Unladen weight.....
13. Particulars of previous registration and registered number (if any).....

Additional particulars to be completed only in the case of transport vehicles other than motor cabs—

14. Number, description and size of tyres—
  - (a) front axle.....
  - (b) rear axle.....
  - (c) any other axle.....
15. Maximum laden weight.....lbs.
16. Maximum axle weight—
  - (a) front axle.....lbs.
  - (b) rear axle.....lbs.
  - (c) any other axle.....lbs.

The above particulars are to be filled in for a rigid frame motor vehicle of two or of three axles, for an articulated vehicle of three axles, or, to the extent applicable, for a trailer (other than the trailer to be registered as part of an articulated vehicle) as the case may be. Where a second trailer or additional trailers are to be registered with an articulated motor vehicle the following particulars are to be furnished for each such trailer :—

17. Type of body.....
18. Unladen weight.....
19. Number, description and size of tyres on the axle.....
20. Maximum axle weight.....

Date.....19 ..

Signature of applicant.

*Explanation.*—An articulated vehicle means a tractor to which a trailer is attached in such a manner that part of the trailer is superimposed on and part of the weight of the trailer is borne by the tractor.

*NOTE.*—The motor vehicle above described is held by the person to be registered as the registered owner, under a hire purchase agreement with....

Signature of owner.

Signature of Hire Purchase Company

(The First Schedule.)

FORM F.

[See section 36 (1).]

*Document to be furnished by the maker or authorised assembler in the case of transport vehicles other than motor cabs.*

Certified that the..... vehicle  
Chassis No..... and Engine No..... is designed for maximum weights  
as follows when fitted with the tyre-equipment specified below :—

Maximum laden weight..... lbs.

Maximum weight front axle..... lbs.

Maximum weight rear axle..... lbs.

Maximum weight any other axle.. lbs.

Tyres—

Front wheels.....

Rear wheels.....

Other wheels.....

.....

.....

Date.....19 .

*Signature of maker  
or authorised assembler.*

*Special certificate to be furnished by an assembler.*

Certified that I am authorised by the maker of the vehicle described  
above to issue this certificate.

*Signature of authorised assembler.*

## (The First Schedule.)

## FORM G.

[See section 24 (2).]

*Form of Certificate of Registration.*

Registered number.....

Brief description of vehicle,

(e.g., Ford touring car, Chevrolet 22 seater bus, Albion lorry, trailer, etc.).

Name, name of father, and address of Registered Owner .....

.....  
*Signature of registering authority.*

Transferred to

*Signature of registering authority.*

Transferred to

*Signature of registering authority.**Detailed description.*

1. Class of vehicle .....
2. Maker's name .....
3. Type of body .....
4. Year of manufacture .....
5. Number of cylinders .....
6. Chassis number .....
7. Engine number .....
8. Horse power .....
9. Maker's classification or, if not known, wheel-base .....
10. Seating capacity (including driver) .....
11. Unladen weight .....

Additional particulars in the case of all transport vehicles other than motor cabs—

12. Registered laden weight.....

13. Number, description and size of tyres—

(a) front axle.....

(b) rear axle.....

(c) any other axle.....

14. Registered axle weight—

(a) front axle.....lbs.

(b) rear axle.....lbs.

(c) any other axle.....lbs.

Additional particulars of alternative or additional trailer or trailers registered with an articulated vehicle—

15. Type of body.....
16. Unladen weight.....lbs.
17. Number, description and size of tyres on the axle .....
18. Registered axle weight.....lbs.

Date.....19 . *Signature of registering authority.*

NOTE.—The motor vehicle above described is held by the person registered as the registered owner under a hire purchase agreement with.....

Date.....19 . *Signature of registering authority.*

## (The First Schedule.)

## FORM H.

[See sections 38 and 39 (2).]

*Certificate of fitness (applicable in the case of transport vehicles only).*

Vehicle No.....is certified as complying with the provisions of Chapter V of the Motor Vehicles Act, 1939, and the rules made thereunder. This certificate will expire on.....

Date.....19 .

*Signature and designation of  
Inspecting authority.*

The certificate of fitness is hereby renewed—

up to.....19 .  
up to.....19 .  
up to.....19 .

*Signature of Inspecting Authority.*



*(The Second Schedule.)*

## THE SECOND SCHEDULE.

[See section 7 (5).]

## I. DISEASES AND DISABILITIES ABSOLUTELY DISQUALIFYING A PERSON FOR OBTAINING A LICENCE TO DRIVE A MOTOR VEHICLE.

1. Epilepsy.
2. Lunacy.
3. Heart disease likely to produce sudden attacks of giddiness or fainting.
4. Inability to distinguish with each eye at a distance of twenty-five yards in good day light (with the aid of glasses, if worn) a series of seven letters and figures in white on a black ground of the same size and arrangement as those of the registration mark of a motor car.
5. A degree of deafness which prevents the applicant from hearing the ordinary sound signals.
6. <sup>1</sup>[Inability readily to distinguish the pigmentary colours red and green.]
7. Night-blindness.

## II. DISEASES AND DISABILITIES ABSOLUTELY DISQUALIFYING A PERSON FOR OBTAINING A LICENCE TO DRIVE A PUBLIC SERVICE VEHICLE.

1. Leprosy.

---

<sup>1</sup> Subs. by s. 5 of the Motor Vehicles (Amendment) Act, 1939 (40 of 1939).

(The Third Schedule.)

### THE THIRD SCHEDULE.

[See sections 7 (6) (a) and 17 (6).]

#### TEST OF COMPETENCE TO DRIVE.

##### Part I.

The candidate shall satisfy the person conducting the test that he is able to—

1. Start the engine of the vehicle.
2. Move away straight ahead or at an angle.
3. Overtake, meet or cover the path of other vehicles and take an appropriate course.
4. Turn right and left corners correctly.
5. Stop the vehicle in an emergency and normally, and in the latter case bring it to rest at an appropriate part of the road.
6. Drive the vehicle backwards and whilst so doing enter a limited opening either to the right or left.
7. Cause the vehicle to face in the opposite direction by means of forward and reverse gears.
8. Give by hand and by mechanical means (if fitted to the vehicle), or, in the case of a disabled driver for whom it is impracticable or undesirable to give signals by hand, by mechanical means in a clear and unmistakable manner, appropriate signals at appropriate times to indicate his intended actions.
9. Act correctly and promptly on all signals given by traffic signs and traffic controllers, and take appropriate action on signs given by other road users.

NOTE.—(i) Requirements 6 and 7 are not applicable in the case of a motor cycle or tricycle not equipped with means for reversing.

(ii) Requirements 6, 7 and 8 are not applicable in the case of invalid carriages.

##### Part II.

The candidate shall satisfy the person conducting the test that he is cognizant of the provisions of sections 81, 82, 83, 84 and 85 and of the Tenth Schedule; that he knows the meaning of the traffic signs specified in the Ninth Schedule; and, if he has not been medically examined, that he is not so deaf as to be unable to hear the ordinary sound signals, and is able to distinguish with each eye at a distance of twenty-five yards in good day light (with the aid of glasses, if worn) a registration mark containing seven letters and figures.

(The Fourth Schedule.)

## THE FOURTH SCHEDULE.

[See sections 14 (1) and 39 (1) and (3).]

AUTHORITIES ENTITLED TO GRANT LICENCES TO DRIVE, AND TO REGISTER MOTOR VEHICLES, THE PROPERTY OF THE CENTRAL GOVERNMENT, AND REGISTRATION MARKS FOR SUCH VEHICLES.

**Part A.**

The authorities specified in the second column may grant licences in respect of vehicles, the property of the Department of the Central Government specified in the first column.

Defence Department of the Central Government.	<ol style="list-style-type: none"> <li>1. District Commanders.</li> <li>2. Commanders of independent brigades.</li> <li>3. Officers commanding units having mechanically propelled vehicles in their charge.</li> <li>4. Commanders, Royal Engineers.</li> </ol>
---	--

**Part B.**

The authorities specified in the second column may register motor vehicles, the property of the Department of the Central Government specified in the first column, and may grant certificates of fitness in respect of such vehicles.

Defence Department of the Central Government.	The Master General of the Ordnance in India.
---	--

**Part C.**

*Registration marks for vehicles registered under section 39.*

A broad arrow above two figures representing the last two figures of the year of purchase of the vehicle followed by not more than four figures.

*(The Fifth Schedule.)*

## THE FIFTH SCHEDULE.

[See sections 19 (2) and (3) and 130.]

OFFENCES ON CONVICTION OF WHICH AN ENDORSEMENT SHALL BE MADE ON THE LICENCE OF THE PERSON AFFECTED.

**Part A.**

1. Driving recklessly or dangerously (section 116).
2. Driving while under the influence of drink or drugs (section 117)
3. Abetment of an offence under section 116 or 117 (section 119).
4. Taking part in unauthorised race or trial of speed (section 120).
5. Driving when disqualified (section 18).
6. Obtaining or applying for a licence without giving particulars of endorsement (section 114).
7. Failing to stop on the occurrence of an accident (section 87).
8. Altering a licence or using an altered licence.
9. Any offence punishable with imprisonment in the commission of which a motor vehicle was used.

**Part B.**

1. Driving without a licence, or without a licence which is effective, or without a licence applicable to the vehicle driven (section 3).
2. Allowing a licence to be used by another person [section 6 (2)].
3. Driving at excessive speed (section 115).
4. Driving when mentally or physically unfit to drive (section 118).
5. Abetment of an offence punishable under section 115 or 118.
6. Refusing or failing within specified time to produce licence (section 86).
7. Failing to stop when required (section 87).
8. Driving an unregistered vehicle (section 22).
9. Driving a transport vehicle not covered by a certificate of fitness (section 38).
10. Driving in contravention of any rule made under section 70 (2) (g) relating to speed governors.
11. Driving a vehicle exceeding the permissible limit of weight (section 124).
12. Failure to comply with a requisition made under section 73.
13. Using a vehicle in unsafe condition (section 121).
14. Driving a transport vehicle in contravention of section 42.

(The Sixth Schedule.)

## THE SIXTH SCHEDULE.

[See sections 24 (3) and 29 (2).]

## REGISTRATION MARKS.

One of the groups of letters specified in the second column followed by any one other letter shall be used as the registration mark for a vehicle in the province specified in the first column.

Assam . . . . .	AS.
Bengal . . . . .	BG, BL.
Bihar . . . . .	BR.
Bombay . . . . .	BM, BY.
Central Provinces and Berar . . . . .	CP.
Madras . . . . .	MD, MS.
North-West Frontier Province. . . . .	FP.
Orissa . . . . .	OR.
Sind . . . . .	KA.
Punjab . . . . .	PB, PJ.
United Provinces . . . . .	UP, US.
Ajmer-Merwara . . . . .	AJ.
<sup>1</sup> [Andaman and Nicobar Islands. . . . .]	AN.]
Coorg . . . . .	CG.
Delhi . . . . .	DL.

NOTE.—These letters shall be followed by not more than four figures, and the letters and figures shall be shown—

1. In the case of transport vehicles . . . . . In black on a white ground.
2. In the case of temporary registrations (section 25) . . . . . In red on a yellow ground.
3. In the case of registration marks allotted to dealers [section 41 (2) (k)] . . . . . In white on a red ground.
4. In other cases . . . . . In white on a black ground.

---

<sup>1</sup> Ins. by s. 6 of the Motor Vehicles (Amendment) Act, 1939 (40 of 1939).

[illegible]

## (The Seventh Schedule.)

Table B.

For each high pressure pneumatic tyre,  
fitted to a wheel on the axle, of a  
nominal size—

The permissible  
weight in  
pounds is—

30 × 5	.	.	.	.	.	.	.	.	.	.	2,000
33 × 5	.	.	.	.	.	.	.	.	.	.	2,000
34 × 5	.	.	.	.	.	.	.	.	.	.	2,000
35 × 5	.	.	.	.	.	.	.	.	.	.	2,000
32 × 6	.	.	.	.	.	.	.	.	.	.	2,650
34 × 6	.	.	.	.	.	.	.	.	.	.	2,850
36 × 6	.	.	.	.	.	.	.	.	.	.	2,650
32 × 6½	.	.	.	.	.	.	.	.	.	.	2,950
32 × 7	.	.	.	.	.	.	.	.	.	.	3,000
34 × 7	.	.	.	.	.	.	.	.	.	.	3,300
36 × 7	.	.	.	.	.	.	.	.	.	.	3,300
38 × 7	.	.	.	.	.	.	.	.	.	.	3,300
36 × 8	.	.	.	.	.	.	.	.	.	.	4,000
38 × 8	.	.	.	.	.	.	.	.	.	.	4,200
40 × 8	.	.	.	.	.	.	.	.	.	.	4,400
38 × 9	.	.	.	.	.	.	.	.	.	.	4,850
40 × 9	.	.	.	.	.	.	.	.	.	.	5,100
42 × 9	.	.	.	.	.	.	.	.	.	.	5,300
40 × 10	.	.	.	.	.	.	.	.	.	.	5,700
44 × 10	.	.	.	.	.	.	.	.	.	.	6,150

**Explanation.**—The figures “5·00-17”, etc., in Table A represent, respectively, the nominal sectional diameter of the tyre and the diameter of the wheel rim; and the figures “30 × 5”, etc., in Table B represent, respectively, the over-all diameter of wheel and tyre and the nominal sectional diameter of the tyre, all figures being in inches. The actual sectional diameter of the tyre when mounted on its appropriate rim and inflated shall in no case be less than the nominal sectional diameter.

**Notes.**—Tyres may be calibrated in so called metric sizes, for example, “170 × 20”. In that case the first number represents the sectional diameter of the tyre in millimetres and the second number represents the diameter of the rim in inches. The permissible weight in pounds for each such tyre shall be determined by dividing the nominal sectional diameter of the tyre in millimetres by the figure 25·4, the quotient being the nominal sectional diameter in inches. The permissible weight given in Table A for the nearest equivalent nominal sectional diameter in inches and the actual rim-diameter shall be the permissible weight for that tyre.

(The Eighth Schedule.)

## THE EIGHTH SCHEDULE.

(See section 71.)

## LIMITS OF SPEED FOR MOTOR VEHICLES.

Class of vehicle.	Maximum speed per hour Miles.
1. Passenger vehicles, that is to say, vehicles constructed solely for the carriage of passengers and their effects :—	
(a) if all the wheels are fitted with pneumatic tyres and the vehicle is not drawing a trailer :—	
(i) if the vehicle is a motor cycle, motor car or motor cab . . . . .	No limit.
(ii) if the vehicle is a public service vehicle other than a motor cab . . . . .	30
(b) if the vehicle, being a motor car or motor cab, is drawing two-wheeled trailer of a laden weight not exceeding 1,700 pounds <i>avoirdupois</i> , and if all the wheels of the vehicle and trailer are fitted with pneumatic tyres . . . . .	30.
(c) any other vehicle, including an invalid carriage . . .	20.
2. Goods vehicles, that is to say, vehicles constructed or adapted for use or used for the conveyance of goods :—	
(a) if all the wheels are fitted with pneumatic tyres and the vehicle is a light transport vehicle and is not drawing a trailer . . . . .	25.
(b) in any other case . . . . .	15.
3. Tractors :—	
(a) if drawing not more than one trailer and all the wheels of the tractor and trailer are fitted with pneumatic tyres . . . . .	15.
(b) in any other case . . . . .	5
4. Locomotives, whether drawing a trailer or not . . .	6.



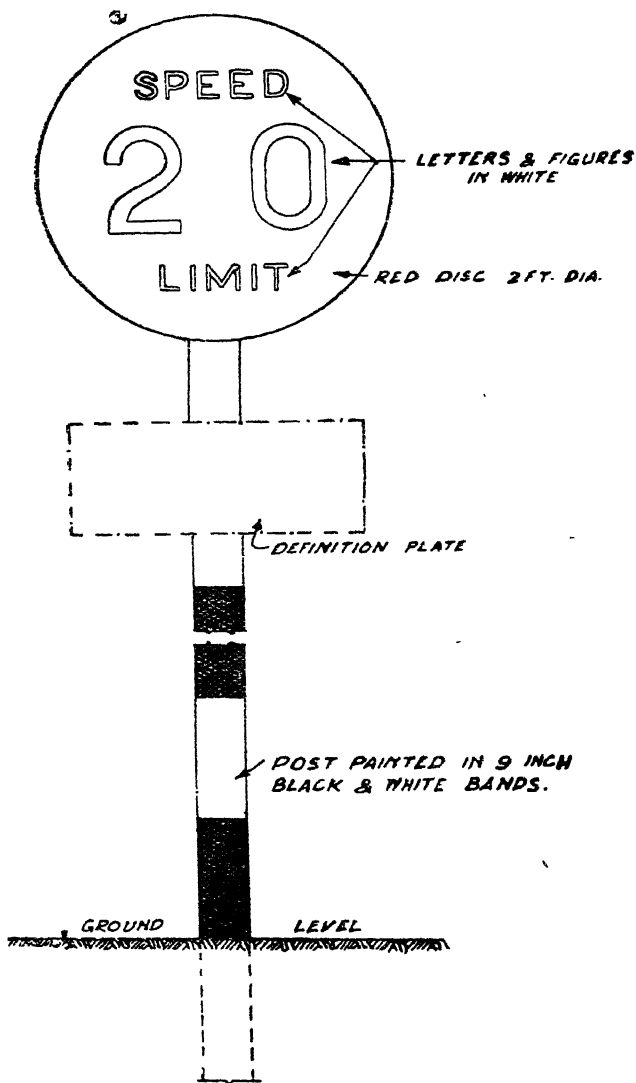
(The Ninth Schedule.)

## THE NINTH SCHEDULE.

(See sections 75, 77 and 78.)

## TRAFFIC SIGNS.

## Part A.—Mandatory Signs

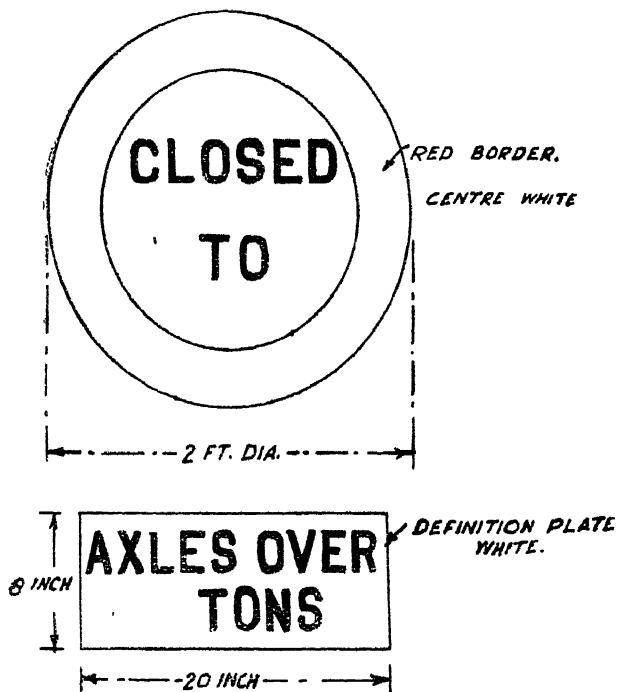
NO. 1SPEED LIMIT

## NOTES :—

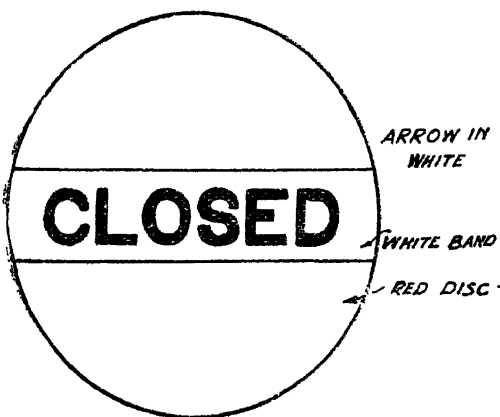
- (1) The figure 20 is given merely as an example. The actual figures will be as prescribed in each case where this sign is used.
- (2) The general design of the post is given for guidance.
- (3) Where the speed limit is, or is to be, imposed only on a certain class or classes of motor vehicle the class or classes will be specified on the "definition plate". Where in addition to a general speed limit applicable to other motor vehicles a special speed limit is, or is to be imposed on vehicles of a certain class or classes, the general speed limit will be specified on the disc and the special speed limit together with the class or classes of vehicle to which it applies will be specified on the "definition plate".

(The Ninth Schedule.)

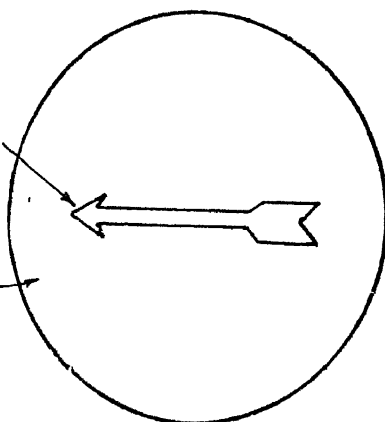
NO. 2  
WEIGHT LIMIT



NO. 3  
TOTAL PROHIBITION

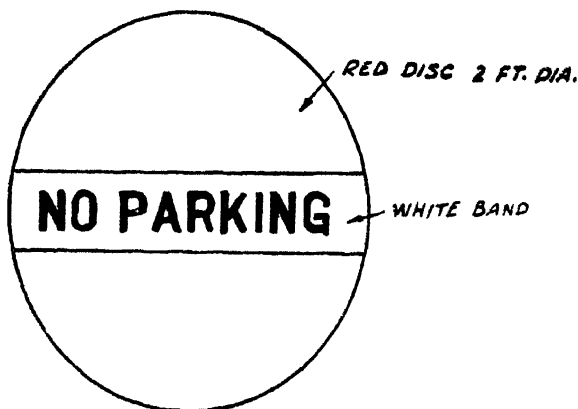


NO. 4  
DIRECTION SIGN



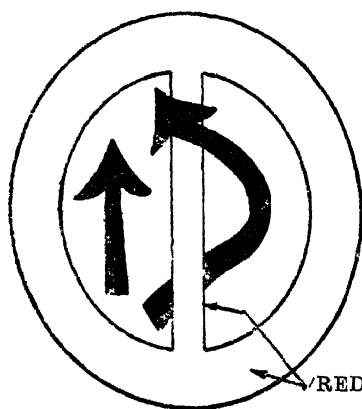
(The Ninth Schedule.)

NO. 5  
NO PARKING

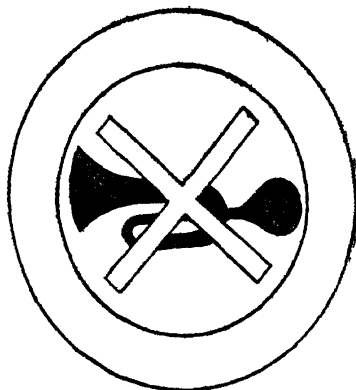


*Note.*—Sign No. 5 as here set forth may be amplified by instructions inscribed upon a definition plate placed below it as in the general arrangement set forth in sign No. 1 of this Part. Upon the definition plate may be set forth the times during which parking is prohibited. In like manner an arrow-head inscribed on the definition plate will indicate that parking is prohibited on that part of the street or road lying to the side of the sign to which the arrow-head points.

NO. 6  
OVERTAKING PROHIBITED



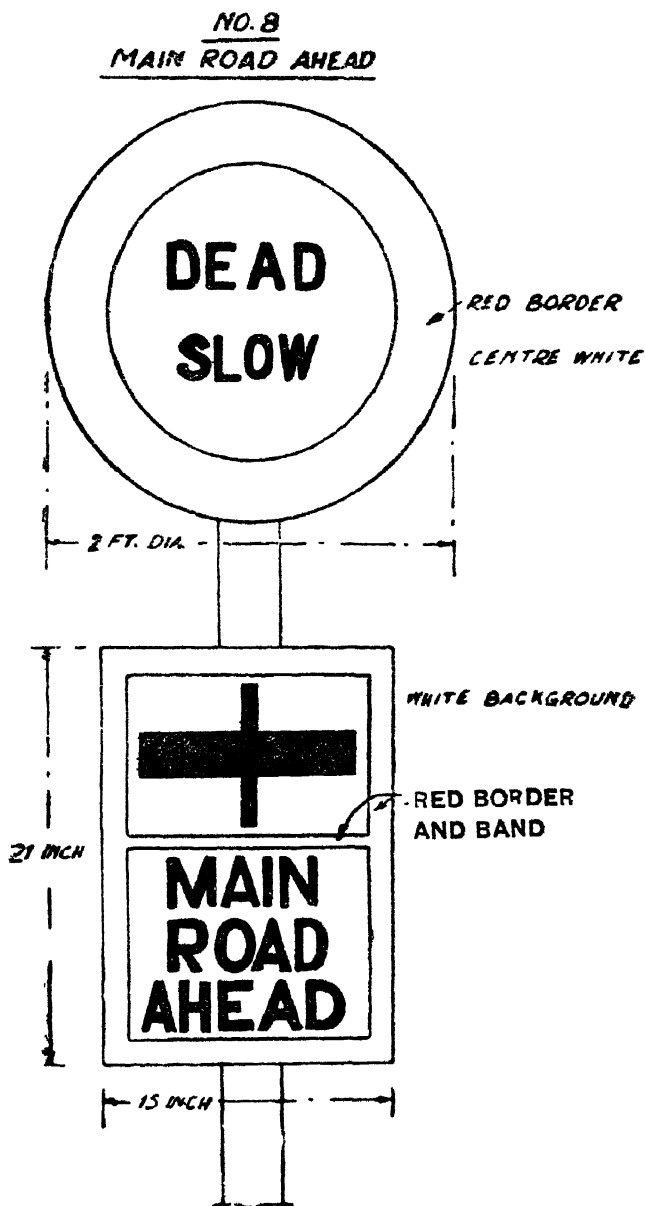
<sup>1</sup> NO. 7  
USE OF SOUND SIGNALS PROHIBITED



Cross and border—Red  
Background—White  
Device—Black.]

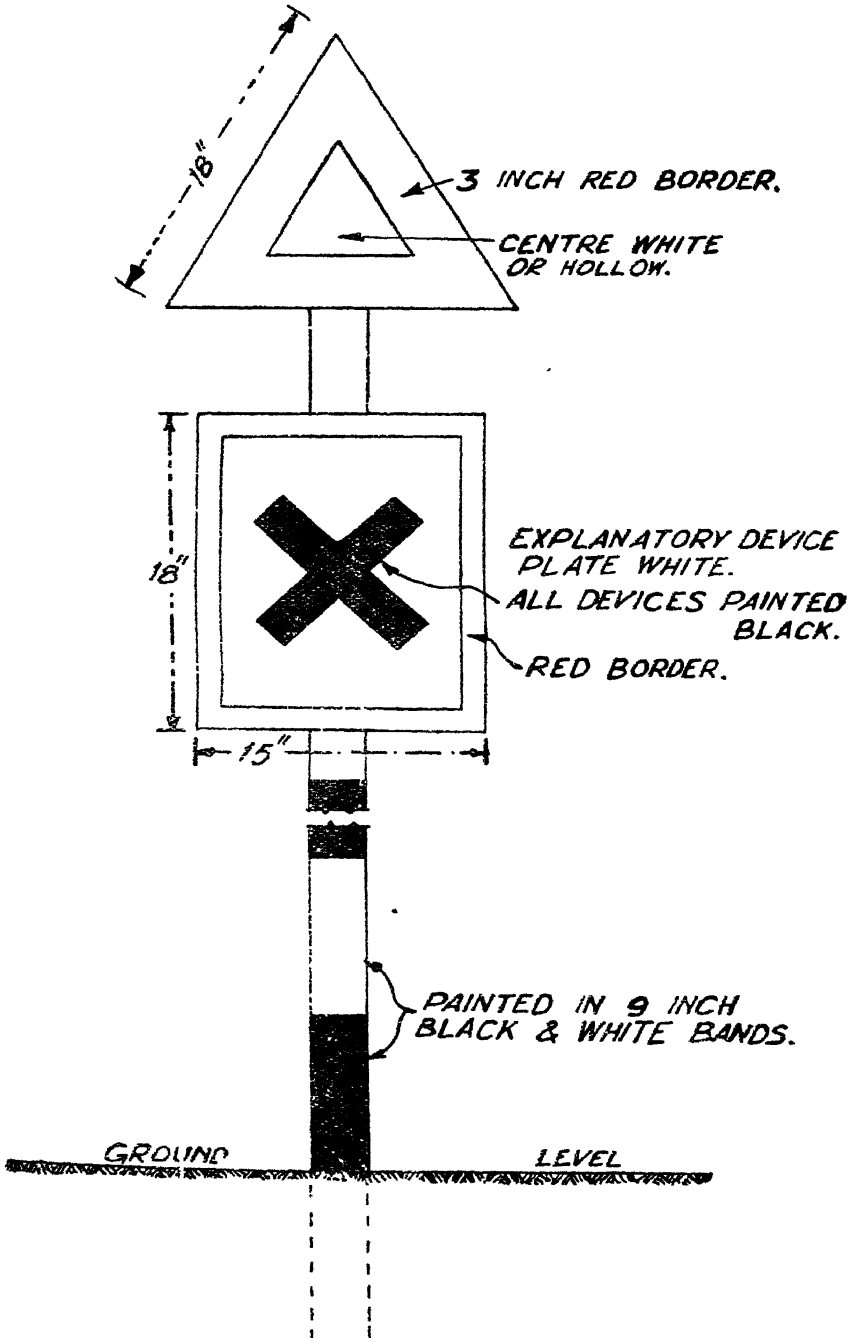
<sup>1</sup> Subs. by s. 7 of the Motor Vehicles (Amendment) Act, 1939 (40 of 1939).

(The Ninth Schedule.)



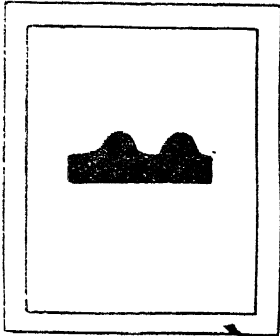
**Part B.—Cautionary Signs.**

**GENERAL DESIGN.**

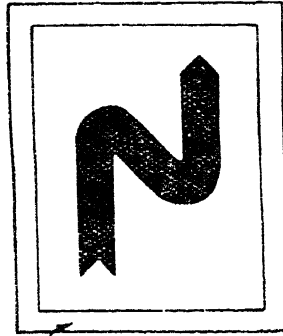


(The Ninth Schedule.)

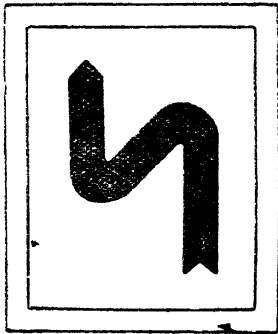
NO. 1  
ROUGH ROAD



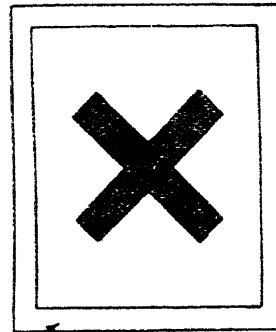
NO. 2  
ZIG-Z AG (RIGHT)



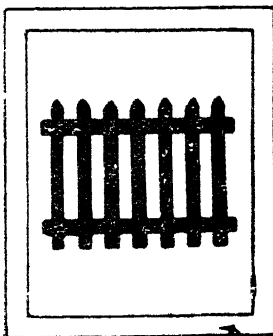
NO. 2  
ZIG-Z AG (LEFT)



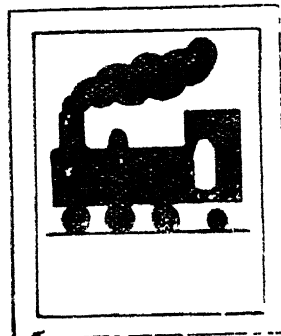
NO. 3  
CROSS ROADS



NO. 4  
LEVEL CROSSING  
(GUARDED)



NO. 5  
LEVEL CROSSING  
(UNGUARDED)

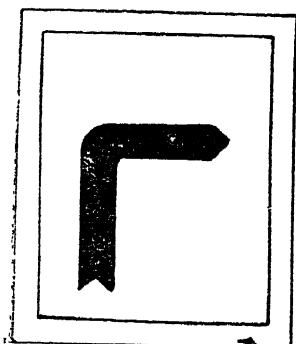


RED BORDER

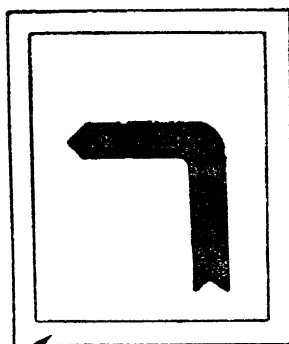
RED BORDER

RED BORDER

NO. 6  
RIGHT TURN



NO. 6  
LEFT TURN

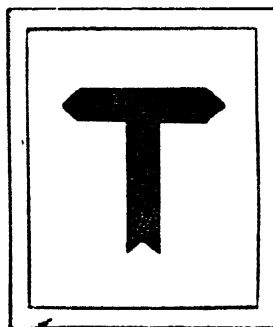


RED BORDER

NO. 7  
SCHOOL

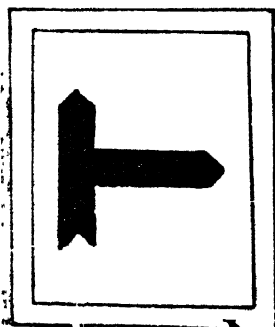


NO. 8  
DEAD END CROSS ROAD

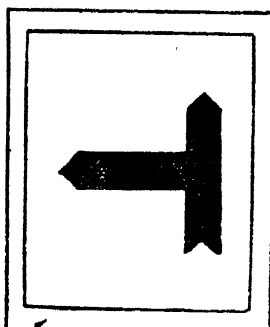


RED BORDER

NO. 9  
SIDE ROAD (RIGHT)



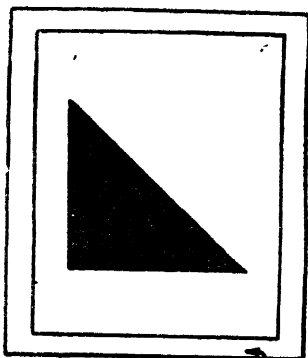
NO. 9  
SIDE ROAD (LEFT)



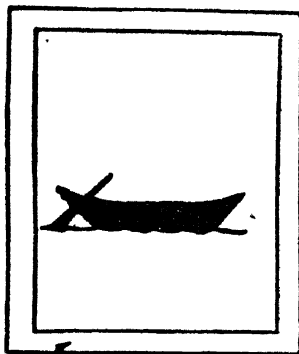
RED BORDER

(The Ninth Schedule.)

NO. 10  
STEEP HILL

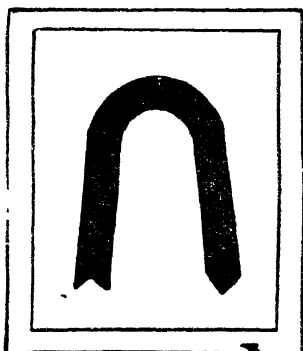


NO. 11  
FERRY

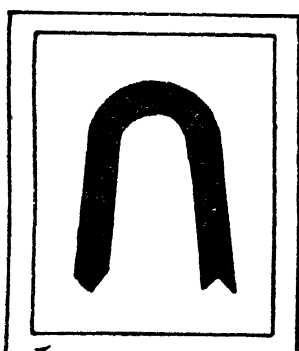


RED BORDER

NO. 12  
HAIR PIN BEND (RIGHT)

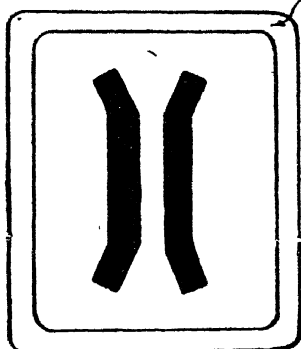


NO. 12  
HAIR PIN BEND (LEFT)



RED BORDER

NO 13  
NARROW BRIDGE



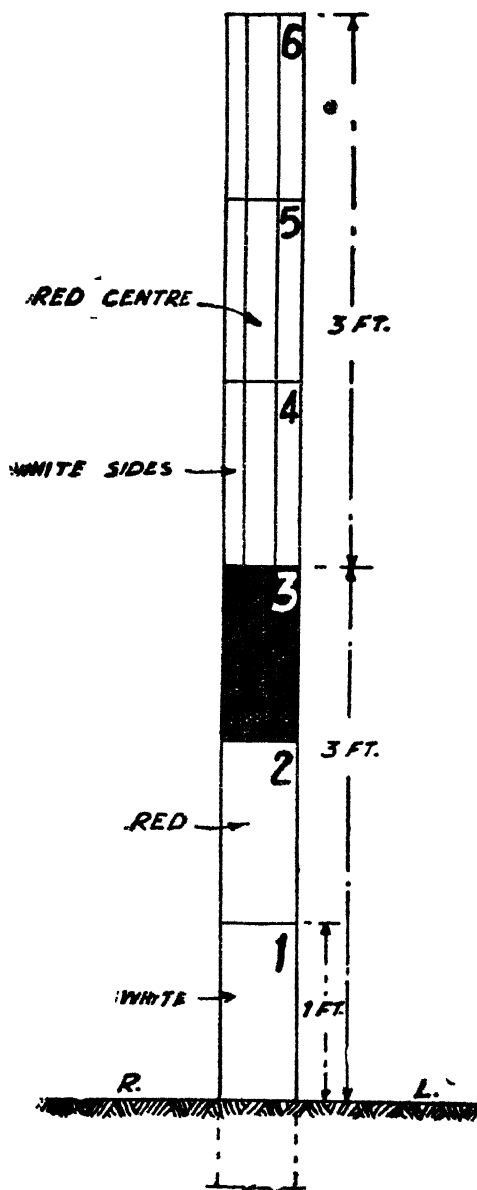
RED BORDER



(The Ninth Schedule.)

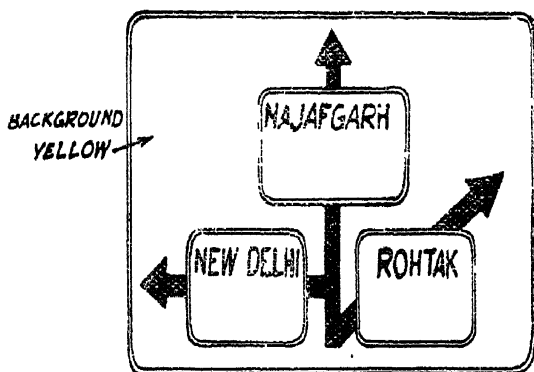
**Part C.—Informatory Signs.**

**NO. 1**  
**FLOOD GAUGE**  
**SIDE ELEVATION.**

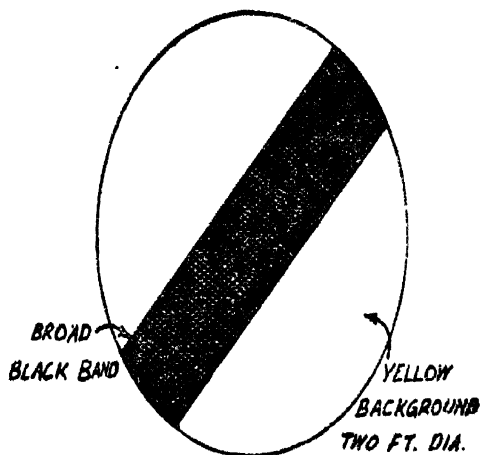


(The Ninth Schedule.)

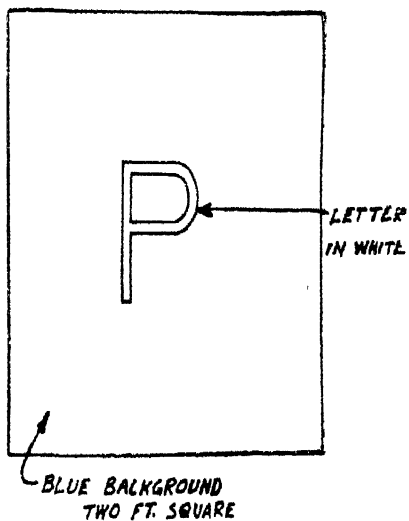
NO. 2  
ROAD JUNCTION APPROACH.



NO. 3  
END OF SPEED LIMIT.



NO. 4  
PARKING SIGN.



*(The Tenth Schedule.)*

## THE TENTH SCHEDULE.

*(See sections 77 and 78.)*

### DRIVING REGULATIONS.

1. The driver of a motor vehicle shall drive the vehicle as close to the left hand side of the road as may be expedient, and shall allow all traffic which is proceeding in the opposite direction to pass him on his right hand side.

2. Except as provided in regulation 3, the driver of a motor vehicle shall pass to the right of all traffic proceeding in the same direction as himself.

3. The driver of a motor vehicle may pass to the left of a vehicle the driver of which having indicated an intention to turn to the right has drawn to the centre of the road and may pass a tram-car or other vehicle running on fixed rails, whether travelling in the same direction as himself or otherwise, on either side:

Provided that in no case shall he pass a tram-car at a time or in a manner likely to cause danger or inconvenience to other users of the road or pass on the left hand side a tram-car, which, when in motion would be travelling in the same direction as himself, while the tram-car is at rest for the purpose of setting down or taking up passengers. -

4. The driver of a motor vehicle shall not pass a vehicle travelling in the same direction as himself—

(a) if his passing is likely to cause inconvenience or danger to other traffic proceeding in any direction, or

(b) where a point or corner or a hill or an obstruction of any kind renders the road ahead not clearly visible.

5. The driver of a motor vehicle shall not, when being overtaken or being passed by another vehicle, increase speed or do anything in any way to prevent the other vehicle from passing him.

6. The driver of a motor vehicle shall slow down when approaching a road intersection, a road junction or a road corner, and shall not enter any such intersection or junction until he has become aware that he may do so without endangering the safety of persons thereon.

7. The driver of a motor vehicle shall on entering a road intersection, if the road entered is a main road designated as such, give way to the vehicles proceeding along that road, and in any other case give way to all traffic approaching the intersection on his right hand.

8. The driver of a motor vehicle shall, when passing or meeting a procession or a body of troops or police on the march or when passing workmen engaged on road repair, drive at a speed not greater than fifteen miles an hour.

*(The Tenth Schedule.)*

9. The driver of a motor vehicle shall—

- (a) when turning to the left, drive as close as may be to the left hand side of the road from which he is making the turn and of the road which he is entering;
- (b) when turning to the right, draw as near as may be to the centre of the road along which he is travelling and cause the vehicle to move in such a manner that—
  - (i) as far as may be practicable it passes beyond, and so as to leave on the driver's right hand, a point formed by the intersection of the centre lines of the intersecting roads; and
  - (ii) it arrives as near as may be at the left hand side of the road which the driver is entering.

*(The Eleventh Schedule.)*

**THE ELEVENTH SCHEDULE.**

*(See section 79.)*

**SIGNALS.**

1. When about to turn to the right or to drive to the right hand side of the road in order to pass another vehicle or for any other purpose, a driver shall extend his right arm in a horizontal position outside of and to the right of his vehicle with the palm of the hand turned to the front.

2. When about to turn to the left or to drive to the left hand side of the road, a driver shall extend his right arm and rotate it in an anti-clockwise direction.

3. When about to slow down, a driver shall extend his right arm with the palm downward and to the right of the vehicle and shall move the arm so extended up and down several times in such a manner that the signal can be seen by the driver of any vehicle which may be behind him.

4. When about to stop, a driver shall raise his right forearm vertically outside of and to the right of the vehicle, palm to the front.

5. When a driver wishes to indicate to the driver of a vehicle behind him that he desires that driver to overtake him, he shall extend his right arm and hand horizontally outside of and to the right of the vehicle and shall swing the arm backwards and forwards in a semi-circular motion.

## THE INDIAN NAVAL RESERVE FORCES (DISCIPLINE) ACT, 1939<sup>1</sup>.

[29th March, 1939.]

An Act to provide for the discipline of members of the Indian Naval Reserve Forces raised in British India on behalf of His Majesty.

WHEREAS it is expedient to provide for the discipline of members of the Indian Naval Reserve Forces raised in British India on behalf of His Majesty, and in furtherance of that purpose to amend the First Schedule to the Indian Navy (Discipline) Act, 1934;

XXXIV of  
1934.

It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Naval Reserve Forces (Discipline) Act, 1939.

Short title,  
extent and  
commence-  
ment.

(2) It extends to the whole of British India, and applies to members of the Indian Naval Reserve Forces wherever they may be.

(3) It shall come into force on such date<sup>2</sup> as the Central Government may, by notification in the official Gazette, appoint in this behalf.

2. The Indian Naval Reserve Forces shall consist of the Royal Indian Fleet Reserve, the Royal Indian Naval Reserve, the Royal Indian Naval Volunteer Reserve and the Royal Indian Naval Communications Reserve.

The Indian  
Naval Reserve  
Forces.

3. The Central Government may make rules for the government, discipline and regulation of the Indian Naval Reserve Forces.

Power to make  
rules for  
regulation of  
Naval Reserve  
Forces.

4. Every member of the Indian Naval Reserve Forces, while undergoing training on board any vessel or otherwise, in pursuance of rules made under section 3, or when called into actual service in the Royal

Liability to  
Naval Disci-  
pline Act.

<sup>1</sup> This Act was made by the Governor General under s. 67-B of the Government of India Act as set out in the Ninth Schedule to the Government of India Act, 1935. No number was given to this Act.

For the Statement of Objects and Reasons, see Gazette of India, 1939, Pt. V, p. 16.

<sup>2</sup> The 3rd June, 1939, see Notification No. 693, dated 3rd June, 1939, Gazette of India, 1939, Pt. I, p. 959.

Indian Navy, on board any vessel or otherwise, in pursuance of the said rules, shall be subject to the Naval Discipline Act as set out in the First Schedule to the Indian Navy (Discipline) Act, 1934, in the same manner as a person in or belonging to the Indian Navy and shall continue to be so subject until duly released from such training or service, as the case may be. XXXIV of 1934.

Penalty for failure to attend when required or called.

5. (1) If any member of the Indian Naval Reserve Forces, when required, in pursuance of rules made under section 3, to attend on board any vessel or at any place for the purpose of undergoing training, fails without reasonable excuse to attend in accordance with such requirement, he shall be punishable with fine which may extend to two hundred rupees.

(2) If any member of the Indian Naval Reserve Forces, when called into actual service in the Royal Indian Navy and required by such call to join any vessel or attend at any place, fails without reasonable excuse to comply with such requirement at or within such time as the Central Government may, by order, direct, he shall be liable to be apprehended and punished in the same manner as a person in or belonging to the Indian Navy deserting or improperly absenting himself from duty, except that the punishment shall not exceed imprisonment which may extend to two years.

Rule of evidence.

6. Where any member of the Indian Naval Reserve Forces is required, in pursuance of rules made under section 3, to attend on board any vessel or at any place for the purpose of undergoing training, or is called into actual service in the Royal Indian Navy, a certificate purporting to be signed by an officer appointed in this behalf under the said rules and stating that the said member failed to attend in accordance with such requirement or call shall, without proof of the signature or appointment of such officer, be evidence of the matter stated therein.

Jurisdiction.

7. No Court inferior to that of a Presidency Magistrate or Magistrate of the first class shall try an offence punishable under sub-section (1) of section 5.

Modification of the Naval Discipline Act.

8. In the Naval Discipline Act as set out in the First Schedule to the Indian Navy (Discipline) Act, 1934,— XXXIV of 1934.

(a) in section 86, for the words commencing “a person holding” and ending “in the Indian

*Dissolution of Muslim Marriages.* [1939 : Act VIII.]

Navy" the following shall be substituted, namely:—

“an officer holding any such position in the Indian Naval Reserve Forces during and in respect of the time when he is subject to the provisions of this Act”;

(b) in section 87, for the words commencing “the Indian Naval Volunteer Reserve” and ending “he is liable” the following shall be substituted, namely:—

“the Indian Naval Reserve Forces to the extent specified in section 4 of the Indian Naval Reserve Forces (Discipline) Act, 1939”.

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**THE DISSOLUTION OF MUSLIM MARRIAGES ACT 1939.**

**ACT NO. VIII OF 1939.<sup>1</sup>**

[17th March, 1939.]

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An Act to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie.

**W**HEREAS it is expedient to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the

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<sup>1</sup> For the Statement of Objects and Reasons, *see* Gazette of India, 1936, Pt. V, p. 154; for Report of the Select Committee *see ibid.*, 1939, Pt. V, p. 1.

This Act has been applied to—

The Chittagong Hill Tracts *see* Notification No. 7359-E.A., dated 3rd July, 1939, Calcutta Gazette, dated 6th July, 1939.

The Darjeeling district and in the partially excluded areas of the Mymensingh district, *see* Notification No. 2678-J., dated 28th July, 1939, Calcutta Gazette, dated 3rd August, 1939.

The Sonthal Parganas district and to the Chota Nagpur Division, by Bihar Government Notification, No. 1088/A-15/40-J.R., dated 31st August, 1940.



effect of the renunciation of Islam by a married Muslim woman on her marriage tie; It is hereby enacted as follows:—

**Short title and  
extent.**

1. (1) This Act may be called the Dissolution of Muslim Marriages Act, 1939.

(2) It extends to the whole of British India.

**Grounds for  
decree for dis-  
solution of  
marriage.**

2. A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely:—

- (i) that the whereabouts of the husband have not been known for a period of four years.
- (ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years;
- (iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards;
- (iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;
- (v) that the husband was impotent at the time of the marriage and continues to be so;
- (vi) that the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease;
- (vii) that she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years:

Provided that the marriage has not been consummated;

- (viii) that the husband treats her with cruelty, that is to say,—
  - (a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or
  - (b) associates with women of evil repute or leads an infamous life, or
  - (c) attempts to force her to lead an immoral life, or

- (d) disposes of her property or prevents her exercising her legal rights over it, or
- (e) obstructs her in the observance of her religious profession or practice, or
- (f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Qoran;
- (ix) on any other ground which is recognised as valid for the dissolution of marriages under Muslim law :

Provided that—

- (a) no decree shall be passed on ground (iii) until the sentence has become final;
- (b) a decree passed on ground (i) shall not take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorised agent within that period and satisfies the Court that he is prepared to perform his conjugal duties, the Court shall set aside the said decree; and
- (c) before passing a decree on ground (v) the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground.

3. In a suit to which clause (i) of section 2 applies—

- (a) the names and addresses of the persons who would have been the heirs of the husband under Muslim law if he had died on the date of the filing of the plaint shall be stated in the plaint,
- (b) notice of the suit shall be served on such persons, and
- (c) such persons shall have the right to be heard in the suit:

Notice to be served on heirs of the husband when the husband's whereabouts are not known.

Provided that paternal uncle and brother of the husband, if any, shall be cited as party even if he or they are not heirs.

## Standard of Weight. [1939 : Act IX.

Effect of conversion to another faith.

4. The renunciation of Islam by a married Muslim woman or her conversion to a faith other than Islam shall not by itself operate to dissolve her marriage:

Provided that after such renunciation, or conversion, the woman shall be entitled to obtain a decree for the dissolution of her marriage on any of the grounds mentioned in section 2:

Provided further that the provisions of this section shall not apply to a woman converted to Islam from some other faith who re-embraces her former faith.

Rights to dower not to be affected.

5. Nothing contained in this Act shall affect any right which a married woman may have under Muslim law to her dower or any part thereof on the dissolution of her marriage.

Repeal of section 5 of Act XXVI of 1937.

6. Section 5 of the Muslim Personal Law (*Shariat*) Application Act, 1937, is hereby repealed.

## THE STANDARDS OF WEIGHT ACT, 1939.

### ACT NO. IX OF 1939.<sup>1</sup>

[28th March, 1939.]

## An Act to establish standards of weight throughout British India.

**W**HEREAS it is expedient to establish standards of weight throughout British India;

It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called the Standards of Weight Act, 1939.

(2) It extends to the whole of British India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

Unit for weight.

2. (1) The unit for weight shall be the standard grain, that is to say, that weight which when multiplied by 1799·84585 is the weight *in vacuo* of the iridio-platinum cylinder in the custody of the Mint

<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1939, Pt. V, p. 18.

This Act has been applied to British Baluchistan, see Gazette of India, 1939, Pt. I, p. 1450.

Master, Bombay, certified by the Standards Department of the British Board of Trade as having a weight of 1799·84585 grains *in vacuo*.

(2) The standard grain shall be the only unit from which all other standard weights shall be ascertained.

3. (1) There shall be the following standard weights, Standard weights.  
namely:—

- (a) the standard tola, being a weight of 180 standard grains;
- (b) the standard seer, being a weight of 80 standard tolas or 14,400 standard grains;
- (c) the standard maund, being a weight of 40 standard seers;
- (d) the standard pound, being a weight of 7,000 standard grains;
- (e) the standard ounce, being one-sixteenth part of the weight of a standard pound;
- (f) the standard hundredweight, being a weight of 112 standard pounds;
- (g) the standard ton, being a weight of 2,240 standard pounds.

(2) No weight other than the weights set forth in sub-section (1) and integral multiples or sub-multiples of any such weight shall be used as a standard weight.

4. (1) The Central Government shall cause to be prepared one set of such of the standard weights specified in sub-section (1) of section 3 or multiples or sub-multiples thereof as the Central Government may consider expedient, and shall cause each weight of such set to be authenticated as having been ascertained from the standard grain, and shall deposit the set in such custody as the Central Government may think fit. Sets of standard weights.

(2) The Central Government shall cause similar sets of weights, similarly authenticated, to be prepared, and shall supply one set to each Provincial Government.

(3) The Central Government shall cause similar sets of weights, similarly authenticated, to be prepared and shall supply one set to the Government of any Indian State or foreign settlement situated in India which applies for it and pays the price fixed by the Central Government.

5. (1) The Central Government may, by notification in the official Gazette, make rules Rules. for carrying into effect the provisions of this Act.

*Indian Finance.*

(2) Without prejudice to the generality of the foregoing power, rules made under this section may regulate—

- (a) the preparation of the sets of standard weights referred to in section 4;
- (b) the custody of the set of such weights which is to be maintained by the Central Government and the periodical verification and adjustment thereof;
- (c) the periodical verification and adjustment of the sets of standard weights supplied to Provincial and other Governments.

Repeal.

6. The Indian Weights and Measures of Capacity Act, 1871, in so far as it relates to the establishment XXXI of 1871, of standards of weight, is hereby repealed.

## THE INDIAN FINANCE ACT, 1939.<sup>1</sup>

[30th March, 1939.]

An Act to fix the duty on salt manufactured in, or imported by land into, certain parts of British India to vary the incidence and rate of excise duty on *khandsari* sugar leviable under the Sugar (Excise Duty) Act, 1934, to vary certain duties leviable under the Indian Tariff Act, 1934, to fix maximum rates of postage under the Indian Post Office Act, 1898, and to fix rates of income-tax and super-tax.

**W**HEREAS it is expedient to fix the duty on salt manufactured in, or imported by land into, certain parts of British India, to vary the incidence and

<sup>1</sup> This Act was made by the Governor General under s. 67-B of the Government of India Act as set out in the Ninth Schedule to the Government of India Act, 1935. No number was given to this Act.

For the Statement of Objects and Reasons, see Gazette of India, 1939, Pt. V, p. 100.

This Act has been applied to—

British Baluchistan, see Notification No. 62-F., dated 30th March 1939, Gazette of India, 1939, Pt. I, p. 581.

the Chittagong Hills Tracts in so far as it affects the Indian Post Office Act, 1898 and the Indian Income-tax Act, 1922, see Notification No. 5932-E. A., dated 20th May, 1939, Calcutta Gazette Pt. I, dated 25th May 1939;

the Darjeeling district and the partially excluded areas of the Mymensingh district, see Notification No. 5650-F.B., dated 3rd July, 1939, Calcutta Gazette, dated 6th July, 1939.

rate of excise duty on *khandsari* sugar leviable under the Sugar (Excise Duty) Act, 1934, to vary the duty on raw cotton leviable under the Indian Tariff Act, 1934, to fix maximum rates of postage under the Indian Post Office Act, 1898, and to fix rates of income-tax and super-tax;

XIV of 1934.

XXXII of  
1934,  
VI of 1898.

It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Finance Act, 1939. Short title and extent.

(2) It extends to the whole of British India.

XII of 1882.

2. The provisions of section 7 of the Indian Salt Act, 1882, shall, in so far as they enable the Central Government to impose by rule made under that section a duty on salt manufactured in, or imported into, any part of British India, be construed as if, for the year beginning on the 1st day of April, 1939, they imposed such duty at the rate of one rupee and four annas per maund of eighty-two and two-sevenths pounds avoirdupois of salt manufactured in, or imported by land into, any such part, and such duty shall, for all the purposes of the said Act, be deemed to have been imposed by rule under that section. Fixation of salt duty.

XIV of 1934.

3. In the Sugar (Excise Duty) Act, 1934,—

Excise duty on  
*Khandsari*  
sugar.

(a) in clause (a) of section 2, the words “wherein, or within the precincts of which, twenty or more workers are working or were working on any day of the preceding twelve months, and” shall be omitted;

(b) in clause (i) of sub-section (2) of section 3, for the words “one rupee and five annas” the words “eight annas” shall be substituted.

XXXII of  
1934.

\*4. In the First Schedule to the Indian Tariff Act, 1934, in Item No. 46 (3), for the words “six pies per lb.” in the fourth column, the words “one anna per lb.” shall be substituted. Import duty  
on raw cotton.

5. For the year beginning on the 1st day of April, 1939, the Schedule contained in Schedule I to this Act shall be inserted in the Indian Post Office Act, 1898, as the First Schedule to that Act. Inland postage  
rates.

VI of 1898.

\* Section 4 came into effect on 1st March, 1939, by virtue of a declaration inserted in the Bill stage of the Act under the Provisional Collection of Taxes Act, 1931 (XVI of 1931).

Income-tax  
and super-tax.

6. (1) Subject to the provisions of sub-section (2)—

(a) income-tax for the year beginning on the 1st day of April, 1939, shall be charged at the rates specified in Part I of Schedule II, and

(b) rates of super-tax for the year beginning on the 1st day of April, 1939, shall, for the purposes of section 55 of the Indian Income-tax Act, 1922, be those specified XI of 1922. in Part II of Schedule II.

(2) In cases to which section 17 of the Indian Income-tax Act, 1922, applies, the tax chargeable XI of 1922 shall be determined in accordance with the provisions of that section with reference to the rates specified in Schedule II.

(3) For the purpose of this section and of Schedule II, the expression "total income" means total income as determined for the purposes of income-tax or super-tax as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922. XI of 1922.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2), where more than half of the total income of any individual or Hindu undivided family consists of income from salaries, interest on securities or dividends in respect of which the individual or Hindu undivided family is deemed, under the provisions of section 49B of the Indian Income-tax Act, 1922, to have paid income-tax imposed in British XI of 1922. India, or consists of income falling under more than one of those heads—

(a) income-tax for the year beginning on the 1st day of April, 1939, shall be charged in respect of such total incomes at the rates of income-tax which were imposed for the year beginning on the 1st day of April, 1938, in respect of incomes of individuals or Hindu undivided families, and

(b) in cases in which super-tax has been deducted under the provisions of section 18 of the said Act or would have been so deductible had the Indian Income-tax (Amendment) Act, 1939, come into force on the 1st day of April, 1938, the rates of super-tax for the year beginning on the 1st day of April,

XI of 1922.

1939, shall, for the purposes of section 55 of the Indian Income-tax Act, 1922, be the rates of super-tax which were imposed for the year beginning on the 1st day of April, 1938, in respect of incomes of individuals or Hindu undivided families, as the case may be.

XI of 1922.

(5) In respect of income to which sub-section (4) applies, the provisions of section 17 of the Indian Income-tax Act, 1922, shall apply to the assessment to be made for the year beginning on the 1st day of April, 1939, as though the Indian Income-tax (Amendment) Act, 1939, had not been passed.

VII of 1939.

## SCHEDULE I.

Schedule to be inserted in the Indian Post Office Act, 1898.

[See section 5.]

### "THE FIRST SCHEDULE.

#### INLAND POSTAGE RATES.

[See section 7.]

##### *Letters.*

For a weight not exceeding one tola . . . . .	One anna.
For every tola, or fraction thereof, exceeding one tola . . . . .	Half an anna.

##### *Postcards.*

Single . . . . .	Nine pies.
Reply . . . . .	One and a half annas.

##### *Book, Pattern and Sample Packets.*

For the first two and a half tolas or fraction thereof . . . . .	Six pies.
For every additional two and a half tolas, or fraction thereof, in excess of two and half tolas . . . . .	Three pies.

##### *Registered Newspapers.*

For a weight not exceeding ten tolas . . . . .	Quarter of an anna.
For a weight exceeding ten tolas and not exceeding twenty tolas . . . . .	Half an anna.
For every twenty tolas, or fraction thereof, exceeding twenty tolas . . . . .	Half an anna.



In the case of more than one copy of the same issue of a registered newspaper being carried in the same packet—

For a weight not exceeding ten tolas	. Half an anna.
For every additional five tolas, or fraction thereof, in excess of ten tolas	. Quarter of an anna.

Provided that such packet shall not be delivered at any addressee's residence but shall be given to a recognised agent at the post office.

#### *Parcels.*

For a weight not exceeding forty tolas	. Four annas.
For every forty tolas, or fraction thereof, exceeding forty tolas	. Four annas."

### SCHEDULE II.

[See section 6.]

#### PART I.

#### RATES OF INCOME-TAX.

A. In the case of every individual, Hindu undivided family, unregistered firm and other association of persons not being a case to which paragraph B of this Part applies—

	Rate.
1. On the first Rs. 1,500 of total income	<i>Nil.</i>
2. On the next Rs. 3,500 of total income	Nine pies in the rupee.
3. On the next Rs. 5,000 of total income	One anna and three pies in the rupee.
4. On the next Rs. 5,000 of total income	Two annas in the rupee.
5. On the balance of total income	Two annas and six pies in the rupee.

Provided that—

- (i) no income-tax shall be payable on a total income which does not exceed Rs. 2,000;
- (ii) the income-tax payable shall in no case exceed half the amount by which the total income exceeds Rs. 2,000.

B. In the case of every company and local authority, and in every case in which, under the provisions of the Indian Income-tax Act, 1922, income-tax is to be charged at the maximum rate—

	Rate.
On the whole of total income . . . . .	Two annas and six pies in the rupee.

## PART II.

### RATES OF SUPER-TAX.

A. In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which paragraph B of this Part applies—

1. On the first Rs. 25,000 of total income	<i>Nil.</i>
2. On the next Rs. 10,000 of total income . . . . .	One anna in the rupee.
3. On the next Rs. 20,000 of total income . . . . .	Two annas in the rupee.
4. On the next Rs. 70,000 of total income . . . . .	Three annas in the rupee.
5. On the next Rs. 75,000 of total income . . . . .	Four annas in the rupee.
6. On the next Rs. 1,50,000 of total income . . . . .	Five annas in the rupee.
7. On the next Rs. 1,50,000 of total income . . . . .	Six annas in the rupee.
8. On the balance of total income . . . . .	Seven annas in the rupee.

B. In the case of every Company and local authority

	Rate.
On the whole of total income . . . . .	One anna in the rupee.

THE REGISTRATION OF FOREIGNERS  
ACT, 1939.

ACT No. XVI OF 1939.<sup>1</sup>

[8th April, 1939.]

An Act to provide for the registration of  
foreigners in British India.

WHEREAS it is expedient to provide for the registration of foreigners entering, being present in, and departing from, British India,

It is hereby enacted as follows:—

Short title and  
extent.

1. (1) This Act may be called the Registration of Foreigners Act, 1939.

(2) It extends to the whole of British India.

Definitions.

2. In this Act—

(a) the word “foreigner” shall denote a person who is not—

(i) a British subject domiciled in the United Kingdom; or

(ii) a British Indian subject; or

(iii) a ruler or subject of an Indian State; or

(iv) a person duly appointed by a foreign Government to exercise diplomatic functions; or

(v) a consul or a vice-consul;

(b) “prescribed” means prescribed by rules made under this Act.

<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, Extraordinary, 1939, p. 69; for the Report of the Select Committee, see Gazette of India, 1939, Pt. V, p. 111.

This Act has been applied to—

British Baluchistan with the omission of Proviso to s. 6, see Gazette of India, 1939, Pt. I, p. 854;

tribal areas other than Baluchistan tribal areas, *ibid*;

the Chittagong Hill Tracts, see Notification No. 700-E.A., dated 23rd June, 1939, Calcutta Gazette, dated 29th June, 1939;

all the excluded and partially excluded areas in Assam by Notification No. 1696-G.S., dated 12th June, 1939, published in Assam Gazette;

the partially excluded areas in the province of Madras, see Notification No. 89, dated 25th September, 1939, Fort St. George Gazette, Pt. I, dated 3rd October, 1939;

excluded areas in the province of Madras, see Notification No. 91, dated 29th September, 1939, Fort St. George Gazette, Pt. I, dated 10th October, 1939.

3. The Central Government may after previous publication, by notification in the official Gazette, make rules with respect to foreigners for any or all of the following purposes, that is to say—

Power to make rules.

- (a) for requiring any foreigner entering, or being present in, British India to report his presence to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;
- (b) for requiring any foreigner moving from one place to another place in British India to report, on arrival at such other place, his presence to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;
- (c) for requiring any foreigner who is about to leave British India to report the date of his intended departure and such other particulars as may be prescribed to such authority and within such period before departure as may be prescribed;
- (d) for requiring any foreigner entering, being present in, or departing from, British India to produce, on demand by a prescribed authority, such proof of his identity as may be prescribed;
- (e) for requiring any person having the management of any hotel, boarding-house, sarai or any other premises of like nature to report the name of any foreigner residing therein for whatever duration, to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;
- (f) for requiring any person having the management or control of any vessel or aircraft to furnish to a prescribed authority such information as may be prescribed regarding any foreigner entering, or intending to depart from, British India in such vessel or aircraft, and to furnish to such authority such assistance as may be necessary or prescribed for giving effect to this Act;

(g) for providing for such other incidental or supplementary matters as may appear to the Central Government necessary or expedient for giving effect to this Act

Burden of proof.

4. If any question arises with reference to this Act or any rule made thereunder, whether any person is or is not a foreigner, or is or is not a foreigner of a particular class or description, the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872, lie upon such person.

I of 1872.

Penalties.

5. Any person who contravenes, or attempts to contravene, or fails to comply with, any provision of any rule made under this Act shall be punished, if a foreigner, with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both, or if not a foreigner, with fine which may extend to five hundred rupees.

Power to exempt from application of Act.

6. The Central Government may, by order, declare that any or all of the provisions of the rules made under this Act shall not apply, or shall apply only with such modifications or subject to such conditions as may be specified in the said order, to or in relation to any individual foreigner or any class or description of foreigner :

Provided that a copy of every such order shall be placed on the table of both Houses of the Central Legislature as soon as may be after its promulgation.

Protection to persons acting under this Act.

7. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Application of other laws not barred.

8. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Foreigners Act, 1864 and any other law for the time being in force. III of 1864.

# THE COAL MINES SAFETY (STOWING) ACT, 1939.

ACT No. XIX OF 1939<sup>1</sup>.

[21st April, 1939.]

**An Act to make further provision for safety  
in coal mines.**

WHEREAS it is expedient to make further provision for safety in coal mines by taking measures to facilitate or require therein the carrying out of the operation known as stowing <sup>2</sup>[and other operations], and to provide for the creation of a fund for the assistance of such <sup>3</sup>[operations], in the manner hereinafter provided;

It is hereby enacted as follows—

1. (1) This Act may be called the Coal Mines Safety (Stowing) Act, 1939. Short title, extent and commencement.

(2) It extends to the whole of British India except Assam and the Punjab.

(3) It shall come into force on such date<sup>4</sup> as the Central Government may, by notification in the official Gazette, appoint.

2. In this Act, unless there is anything repugnant Definition. in the subject or context,—

(a) “agent”, “mine” and “owner” have the meanings respectively assigned to them in section 3 of the Indian Mines Act, 1923;

(b) “Board” means the Coal Mines Stowing Board constituted under section 3;

(c) “Chief Inspector” and “Inspector” mean the persons respectively appointed to be Chief Inspector of Mines and Inspector of Mines under sub-section (1) of section 4 of the Indian Mines Act, 1923 and the provisions of that Act shall apply to the Chief Inspector and to all Inspectors

IV of 1923.

IV of 1923.

<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1939, Pt. V, p. 23; for the Report of Select Committee, see *ibid.*, p. 37.

<sup>2</sup> Ins. by s. 2 of the Coal Mines Safety (Stowing) Amendment Act, 1940 (11 of 1940).

<sup>3</sup> Subs. for “operation”, *ibid.*

<sup>4</sup> The 27th May, 1939, see Gazette of India, 1939, Pt. I, p. 907.

while exercising their powers under this Act or the rules made thereunder;

- (d) "fund" means the Coal Mines Stowing Fund;
- (e) "prescribed" means prescribed by rules made under this Act;
- (f) "soft coke" means of coke which is unsuitable for metallurgical purposes, and "hard coke" means all coke which is not soft coke;
- (g) "stowing" means the operation of filling with sand or other incombustible material space left underground in a coal mine by the extraction of coal.

**Constitution  
of Board.**

3. (1) The Central Government shall, as soon as may be after the commencement of this Act, constitute a Board to be called the Coal Mines Stowing Board to administer the fund, and such Board shall be a body corporate and have perpetual succession and a common seal, and shall by the said name sue and be sued.

(2) The Board shall consist of the following members, namely:—

- (i) a person in the service of the Crown, appointed by the Central Government, as Chairman;
- (ii) the Chief Inspector, or an Inspector appointed by the Central Government in this behalf;
- (iii) two persons nominated by the Indian Mining Association;
- (iv) one person nominated by the Indian Mining Federation;
- (v) one person nominated by the Indian Colliery Owners' Association;

Provided that if, within the prescribed period, any body fails to make the nomination which it is entitled to make under this sub-section, the Central Government may itself nominate a person to fill the place on the Board.

(3) Where a nominated member dies, resigns, ceases to reside in British India or becomes incapable of acting, the Central Government shall, on the recommendation of the body which would have been entitled to make the nomination if it had been a first nomination under sub-section (2), or where such recommendation is not made within the prescribed period, may, on its own initiative, nominate a person to fill the vacancy.

(4) No act done by the Board shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Board.

4. (1) The Board may, at any time and for such period as it thinks fit, co-opt as members of the Board any persons possessing such technical qualifications as may be prescribed. Power to Board to co-opt members.

(2) A member co-opted under sub-section (1) shall exercise all the powers and functions of a member under this Act, except that he shall not be entitled to vote on any question coming before the Board.

5. With effect from such date as the Central Government may, by notification in the official Gazette, appoint in this behalf, there shall be levied and collected on all coal raised and despatched, and on all soft coke manufactured and despatched, from collieries in British India a duty of excise as may, by notification in the official Gazette, be fixed from time to time by the Central Government, subject to a maximum rate of three annas per ton; similarly there shall be levied and collected on such descriptions of hard coke as may be prescribed a duty of excise as may, by notification in the official Gazette, be fixed from time to time by the Central Government, subject to a maximum rate of one and a half times the rate of excise duty for the time being in force in respect of coal and soft coke. Imposition of excise duty.

6. During the period in which a duty of excise is being levied under section 5, the Central Government may, by notification in the official Gazette, impose on all coal and soft coke and on such descriptions of hard coke as may be prescribed under section 5, imported into British India from any foreign country or brought into British India from the territory of any Imposition of customs duty



Indian State <sup>1</sup>\* \* \* \* \*, a duty of customs, <sup>2</sup>[(which shall be in addition to any duty of customs for the time being leviable under any other Act)], at rates equivalent to the rates of the duty of excise levied under section 5 of this Act.

Payment to Board of sum equivalent to the net proceeds of the excise duty.

7. The Central Government shall, as soon as may be in each financial year, pay to the Board a sum equivalent to the net proceeds <sup>3</sup>[determined in such manner as may be prescribed] of the duty of excise realised under section 5 during the preceding year.

Moneys received by the Board to be credited to the fund.

8. (1) The sum referred to in section 7 and any other moneys received by the Board shall be credited to a fund to be called the Coal Mines Stowing Fund, which shall be applied by the Board in such manner and subject to such conditions as may be prescribed, to—

- (i) meeting the expenses in connection with the administration and the furtherance of the objects of this Act; <sup>4</sup>\*
- (ii) the grant of stowing materials and other assistance for stowing operations to owners, agents or managers of coal mines;
- <sup>5</sup>[(iii) the execution of operations other than stowing in furtherance of the objects of this Act; and
- (iv) the prosecution of research work connected with safety in mines.].

(2) The Board shall keep accounts of the fund, and such accounts shall be examined and audited at the prescribed times by auditors appointed in this behalf by the Central Government.

Powers of Inspectors.

9. (1) The Chief Inspector or any Inspector may make such examination and inquiries as he thinks fit in order to ascertain whether the provisions of this Act and of any rules and orders made thereunder are being complied with.

(2) The Chief Inspector or any Inspector may, with such assistants, if any, as he thinks fit, enter, inspect and examine at any time by day or night any coal mine in respect of which assistance is being, or has been, given under this Act, in order to ascertain

<sup>1</sup> Certain words were omitted by s. 3 of the Coal Mines Safety (Stowing) Amendment Act, 1940 (11 of 1940).

<sup>2</sup> Ins., *ibid.*

<sup>3</sup> Subs. for the original words by s. 4, *ibid.*

<sup>4</sup> The word "and" was omitted by s. 5, *ibid.*

<sup>5</sup> Added, *ibid.*

the amount of sand or other incombustible material used in stowing in the mine or to ensure that stowing<sup>1</sup>[or any other operation towards which assistance may be granted under this Act], has been, or is being, done effectively :

Provided that the power conferred by this subsection shall not be exercised in such a manner as unreasonably to impede or obstruct the working of the mine.

IV of 1923.

(3) Without prejudice to the provisions of section 19 of the Indian Mines Act, 1923, the Chief Inspector or any Inspector may, by order in writing addressed to the owner, agent or manager of a coal mine, require him to take such protective measures, including stowing, in the mine as the Chief Inspector or the Inspector may think necessary, if in the opinion of the Chief Inspector or Inspector—

- (a) the extraction or reduction of pillars in any part of the mine is likely to cause the crushing of pillars or the premature collapse of any part of the workings or otherwise endanger human life or the mine, or
- (b) adequate provision against the outbreak of fire or flooding has not been made by providing for the sealing off and isolation of any part of the mine or for restricting the area that might be affected by fire or flooding, as the case may be.

10. The provisions of sub-sections (3) to (6) (both inclusive) of section 19 of the Indian Mines Act, 1923, shall apply to an order made under sub-section (3) of section 9 of this Act as they apply to an order made under sub-section (2) of section 19 of that Act, and all the provisions of the Indian Mines Act, 1923 (except sub-section (1) of section 11 thereof), affecting committees appointed for the purposes of that Act or relating to the disposal of references made to such committees, shall apply, *mutatis mutandis* and so far as may be, to a committee appointed to inquire into a reference under this Act and to the disposal of such reference.

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<sup>1</sup> Ins. by s. 6 of the Coal Mines Safety (Stowing) Amendment Act, 1940 (11 of 1940).

Committees of  
Inquiry.

11. (1) A committee appointed to inquire into a reference arising out of an order passed under sub-section (3) of section 9 shall consist of—

- (a) the Chairman of the Board as Chairman;
- (b) four members selected by the Chairman of the Board as follows:—
  - (i) two, from a panel of eight persons nominated by the Indian Mining Association;
  - (ii) one, from a panel of four persons nominated by the Indian Mining Federation;
  - (iii) one, from a panel of four persons nominated by the Indian Colliery Owners' Association; and
- (c) one member appointed by the Central Government to represent the interests of persons employed in coal mines.

(2) No person shall be nominated to the panels referred to in clause (b) of sub-section (1) unless he possesses such technical qualifications as may be prescribed.

(3) If any body fails, within the prescribed period, to make any nomination which it is entitled to make under sub-section (1) or to fill any vacancy in a panel, the Central Government shall itself nominate a sufficient number of persons to complete the panel.

Power to make  
rules.

12. (1) The Central Government may, after previous publication, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such rules may provide for any or all of the following purposes, namely:—

- (a) the nomination, and term of office, of members of the Board appointed or nominated under section 8;
- (b) the powers and functions of, and the conduct of business by, the Board;
- <sup>1</sup>[(bb) the determination of the net proceeds of the duty of excise for the purposes of section 7];
- (c) prescribing the technical qualifications to be possessed by co-opted members of the Board and by persons nominated to the panels referred to in section 11;

<sup>1</sup> Ins. by s. 7 of the Coal Mines Safety (Stowing) Amendment Act, 1940 (II of 1940).

1939 : Act XXIII.] *Indian Soft Coke Cess  
Committee (Reconstitution  
and Incorporation).*

- (d) prescribing the descriptions of hard coke on which a duty of excise may be levied under section 5;
- (e) regulating the levy, collection and payment of the duty of excise; and the imposition, collection and payment of the duty of customs;
- (f) prescribing the manner in which and the conditions under which sums at the credit of the fund may be applied;
- (g) prescribing the form in which the accounts of the fund shall be kept and the times at which such accounts shall be audited, and regulating the publication of the abstract of such accounts and the report of the auditors thereon, and prescribing the procedure in relation to any items of expenditure from the fund disallowed by the auditors;
- (h) any other matter which is to be or may be prescribed.

13. This Act applies to coal mines belonging to the Crown Application to  
Crown mines.

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THE INDIAN SOFT COKE CESS COMMITTEE (RECONSTITUTION AND INCORPORATION) ACT, 1939.

ACT No. XXIII OF 1939<sup>1</sup>.

[21st April, 1939.]

An Act to reconstitute and incorporate the Committee constituted under the Indian Soft Coke Cess Act, 1929.

WHEREAS it is expedient to reconstitute and incorporate the Committee constituted under the Indian Soft Coke Cess Act, 1929;

—4TH of 1929:

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<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1939, Pt. V, p. 102.

330 *Indian Soft Coke Cess [1939 : Act XXIII  
Committee Reconstitution  
and Incorporation.)*

It is hereby enacted as follows :—

Short title,  
commencement  
and duration.

1. (1) This Act may be called the Indian Soft Coke Cess Committee (Reconstitution and Incorporation) Act, 1939.

(2) It shall come into force on such date<sup>1</sup> as the Central Government may, by notification in the official Gazette, appoint in this behalf, and shall remain in force as long only as sections 2 to 7 of the Indian Soft Coke Cess Act, 1929, remain in force. VIII of 1929.

Reconstitution  
of the Indian  
Soft Coke Cess  
Committee.

2. On the commencement of this Act, the Committee constituted under sub-section (1) of section 4 of the Indian Soft Coke Cess Act, 1929, shall stand dissolved, and shall be reconstituted in the manner provided in section 4 of the said Act as amended by section 4 of this Act. VIII of 1929.

Vesting of  
moneys in the  
reconstituted  
Committee

3. All the moneys held by the dissolved Committee shall vest in the Committee as reconstituted under section 2.

Amendment of  
Act VIII of  
1929.

4. In the Indian Soft Coke Cess Act, 1929,— VIII of 1929

(1) in the long title and in the preamble, the word “and”, where it occurs for the first time, shall be omitted;

(2) in sub-section (1) of section 3, the word “and”, where it occurs for the second time, shall be omitted; and

(3) in section 4,—

(a) in sub-section (1),—

(i) in clause (iv), for the word “seven” the word “four” shall be substituted, and the word “and” shall be omitted;

(ii) after clause (v) the following clause shall be inserted, namely :—

“(vi) three persons nominated by the Indian Colliery Owners’ Association.”;

<sup>1</sup> The 15th July, 1939, see Gazette of India, 1939, Pt. I p. 1221.

1939 : Act XXIII.] *Indian Soft Coke Cess Committee (Reconstitution and Incorporation).* 331

1939 : Act XXIV.] *Indian Census.*

(b) after sub-section (1) the following sub-section shall be inserted, namely:—

“(1A) The Committee constituted under sub-section (1) shall be called the Soft Coke Cess Committee and shall be a body corporate and have perpetual succession and a common seal and shall by the said name sue and be sued.”

## THE INDIAN CENSUS ACT, 1939.

ACT No. XXIV OF 1939<sup>1</sup>.

[26th September, 1939.]

An Act to provide for certain matters in connection with the taking of the census.

WHEREAS it has been determined to take a census of British India during the year 1941, and whereas it is expedient to provide for certain matters in connection with the taking of such census;

It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Census Act, 1939. Short title and extent.

(2) It extends to the whole of British India.

2. (1) The Central Government may appoint a Census Commissioner to supervise the taking of the census throughout British India, and Superintendents of Census Operations to supervise the taking of the census within the several Provinces. Appointment of census staff.

<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1939, Pt. V, p. 154.

This Act has been applied to—

British Baluchistan, see Notification No. 225-F., dated 1st November, 1939, Gazette of India, 1939, Pt. I, p. 1797; Partially excluded areas and excluded areas in the Province of Madras, see Notification No. 112, dated 15th November, 1939, Fort St. George Gazette, 1939, Pt. I, p. 1527;

Darjeeling district and to partially excluded areas in Mymensingh district, see Notification No. 166-T.R., dated 11th October, 1939, Calcutta Gazette, dated 19th October, 1939;

Chittagong Hill Tracts, see Notification No. 167-T.R., dated 11th October, 1939, Calcutta Gazette, dated 19th October, 1939.

(2) The Provincial Government may appoint persons as census-officers to take, or aid in, or supervise the taking of, the census within any specified local area.

(3) A declaration in writing, signed by any authority authorised by the Provincial Government in this behalf, that any person has been duly appointed a census-officer for any local area shall be conclusive proof of such appointment.

(4) The Provincial Government may delegate to such authority as it thinks fit the power of appointing census-officers conferred by sub-section (2).

Status of  
census autho-  
rities as public  
servants

3. The Census Commissioner, all Superintendents of Census Operations and all census-officers shall be deemed to be public servants within the meaning of the Indian Penal Code.

XLV of 1860.

Discharge of  
duties of  
census-officer  
in certain  
cases.

4. (1) (a) Every officer in command of any body of men belonging to His Majesty's naval, military or air force or of any vessel of war,

(b) every person (except a pilot or harbour-master) having charge or control of a vessel,

(c) every person in charge of a lunatic asylum, hospital, workhouse, prison, reformatory or lock-up or of any public, charitable, religious or educational institution,

(d) every keeper, secretary or manager of any *sarai*, hotel, boarding-house, lodging-house, emigration depot, or club,

(e) every manager or officer of a railway or any commercial or industrial establishment, and

(f) every occupant of immovable property wherein at the time of the taking of the census persons are living,—

shall, if so required by the District Magistrate or by such authority as the Provincial Government may appoint in this behalf, perform such of the duties of a census-officer in relation to the persons who at the time of the taking of the census are under his command or charge, or are inmates of his house, or are present on or in such immovable property, or are employed under him, as such Magistrate or authority may, by written order, direct.

(2) All the provisions of this Act relating to census-officers shall apply, so far as may be, to all persons while performing such duties under this section, and

X V of 1860.

any person refusing or neglecting to perform any duty which under this section he is directed to perform shall be deemed to have committed an offence under section 187 of the Indian Penal Code.

5. The District Magistrate, or such authority as the Provincial Government may appoint in this behalf for any local area, may, by written order which shall have effect throughout the extent of his district or of such local area, as the case may be, call upon—

Power to call upon certain persons to give assistance

- (a) all owners and occupiers of land, tenure-holders, and farmers and assignees of land-revenue, or their agents, and
- (b) all members of district, municipal, *panchayat* and other local authorities and officers and servants of such authorities,

to give such assistance as shall be specified in the order towards the taking of a census of the persons who are, at the time of the taking of the census, on the lands of such owners, occupiers, tenure-holders, farmers and assignees, or within the areas for which such local authorities are established, as the case may be, and the persons to whom an order under this section is directed shall be bound to obey it and shall, while acting in pursuance of such order, be deemed to be public servants within the meaning of the Indian Penal Code.

XLV of 1860.

6. (1) A census-officer may ask all such questions of all persons within the limits of the local area for which he is appointed as, by instructions issued in this behalf by the Provincial Government and published in the official Gazette, he may be directed to ask.

Asking in questions and obligation to answer.

(2) Every person of whom any question is asked under sub-section (1) shall be legally bound to answer such question to the best of his knowledge or belief :

Provided that no person shall be bound to state the name of any female member of his household, and no woman shall be bound to state the name of her husband or deceased husband or of any other person whose name she is forbidden by custom to mention.

7. Every person occupying any house, enclosure, vessel or other place shall allow census-officers such access thereto as they may require for the purposes of

Occupier to permit access and affixing of numbers.



the census and as, having regard to the customs of the country, may be reasonable, and shall allow them to paint on, or affix to, the place such letters, marks or numbers as may be necessary for the purposes of the census.

Occupier or  
manager to fill  
up schedule.

8. (1) Subject to such orders as the Provincial Government may issue in this behalf, a census-officer may, within the local area for which he is appointed, leave or cause to be left a schedule at any dwelling-house or with the manager or any officer of any commercial or industrial establishment, for the purpose of its being filled up by the occupier of such house or of any specified part thereof or by such manager or officer with such particulars as the Provincial Government may direct regarding the inmates of such house or part thereof, or the persons employed under such manager or officer, as the case may be, at the time of the taking of the census.

(2) When such schedule has been so left, the said occupier, manager or officer, as the case may be, shall fill it up or cause it to be filled up to the best of his knowledge or belief so far as regards the inmates of such house or part thereof or the persons employed under him, as the case may be, at the time aforesaid, and shall sign his name thereto and, when so required, shall deliver the schedule so filled up and signed to the census-officer or to such person as the census-officer may direct.

#### Penalties.

9. (a) Any census-officer or any person lawfully required to give assistance towards the taking of a census who refuses or neglects to use reasonable diligence in performing any duty imposed upon him or in obeying any order issued to him in accordance with this Act or any rule made thereunder, or any person who hinders or obstructs another person in performing any such duty or in obeying any such order, or

(b) any census-officer who intentionally puts any offensive or improper question or knowingly makes any false return or, without the previous sanction of the Central Government or the Provincial Government, discloses any information which he has received by means of, or for the purposes of, a census return, or

(c) any person who intentionally gives a false answer to, or refuses to answer to the best of his knowledge

or belief, any question asked of him by a census-officer which he is legally bound by section 6 to answer, or

(d) any person occupying any house, enclosure, vessel or other place who refuses to allow a census-officer such reasonable access thereto as he is required by section 7 to allow, or

(e) any person who removes, obliterates, alters or damages before the 31st day of March, 1941 any letters, marks or numbers which have been painted or affixed for the purposes of the census, or

(f) any person who, having been required under section 8 to fill up a schedule, knowingly and without sufficient cause fails to comply with the provisions of that section, or makes any false return thereunder,—shall be punishable with fine which may extend to two hundred rupees.

10. No prosecution under this Act shall be instituted except with the previous sanction of the Provincial Government or of an authority authorised in this behalf by the Provincial Government. Sanction required for prosecutions.

11. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under this Act: Operation of other laws not barred.

Provided that no such prosecution shall be instituted except with the previous sanction referred to in section 10.

12. No Court inferior to that of a Presidency Magistrate or a Magistrate of the second class shall try, whether under this Act or under any other law, anything which constitutes an offence under this Act. Jurisdiction.

13. No person shall have a right to inspect any book, register or record made by a census-officer in the discharge of his duty as such, or any schedule delivered under section 8, and notwithstanding anything to the contrary in the Indian Evidence Act, 1872, no entry in any such book, register, record or schedule shall be admissible as evidence in any civil proceeding whatsoever or in any criminal proceeding other than a prosecution under this Act or any other Records of census not open to inspection nor admissible in evidence.

law for any act or omission which constitutes an offence under this Act.

Temporary suspension of other law as to mode of taking census in municipalities.

14. Notwithstanding anything in any enactment or rule with respect to the mode in which a census is to be taken in any municipality, the municipal authority, in consultation with the Superintendent of Census Operations or with such other authority as the Provincial Government may authorise in this behalf shall, at the time appointed for the taking of the census of British India during the year 1941, cause the census of the municipality to be taken wholly or in part by any method authorised by or under this Act.

Power in regard to expenses.

15. Notwithstanding anything in any enactment or rule in regard to municipal, local, union or village funds, the Provincial Government may direct that the whole or any part of any expenses incurred for anything done in accordance with this Act or the rules made thereunder may be charged to any municipal, local, union or village fund constituted for, and on behalf of, the area within which such expenses were incurred.

Grant of statistical abstracts.

16. The Census Commissioner for British India or any Superintendent of Census Operations or such person as the Provincial Government may authorise in this behalf may, if he so thinks fit, at the request and cost (to be determined by him) of any local authority or person, cause abstracts to be prepared and supplied containing any such statistical information as can be derived from the census returns for British India or the Province, as the case may be, being information which is not contained in any published report and which in his opinion it is reasonable for that authority or person to require.

Power to make rules.

17. (1) The Central Government may make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Central Government may make rules providing—

- (a) for the appointment of census-officers and of persons to perform any of the duties of census-officers or to give assistance towards the taking of a census, and for the general instructions to be issued to such officers and persons;

1939 : Act XXVIII.] *Medical Diplomas.*

- (b) for the enumeration of persons employed on railways and their families and of other classes of the population for which it may be necessary or expedient to make special provision.

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THE MEDICAL DIPLOMAS ACT, 1939.  
ACT No. XXVIII OF 1939.<sup>1</sup>

[26th September, 1939.]

An Act to make the provision referred to in sub-section (1) of section 120 of the Government of India Act, 1935.

WHEREAS it is expedient to make the provision relating to medical diplomas granted in the United Kingdom or Burma which is referred to in sub-section (1) of section 120 of the Government of

28 Geo. 5, c. 2. India Act, 1935;

It is hereby enacted as follows:—

1. (1) This Act may be called the Medical Diplomas Act, 1939. Short title and extent.

(2) It extends to the whole of British India.

2. In this Act—

Definitions.

- (a) “diploma” has the meaning assigned to it in sub-section (7) of section 120 of the Government of India, Act 1935;
- (b) “United Kingdom” means the United Kingdom of Great Britain and Northern Ireland.

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<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1939, Pt. V, p. 148.

This Act has been applied to British Baluchistan, see Gazette of India, 1940, Pt. I, p. 790.

To the Darjeeling district and to the partially excluded areas of the Mymensingh district with effect from 5th December 1940, see Bengal Govt. Notfn. No. 2660-Medl., dated the 27th November, 1940.

Conditions for  
excluding from  
practice British subjects  
domiciled in  
the United  
Kingdom or  
India who hold  
medical  
diplomas  
granted in the  
United  
Kingdom on  
the ground of  
inadequacy of  
such diplomas.

3. So long as the condition set out in sub-section (3) of section 120 of the Government of India Act, 1935, continues to be fulfilled, a British subject domiciled in the United Kingdom or India who, by virtue of a medical diploma granted to him in the United Kingdom, is, or is entitled to be, registered in the United Kingdom as a qualified medical practitioner shall not, by or under any law for the time being in force, be excluded from practising medicine, surgery or midwifery in British India or in any part thereof, or from being registered as qualified so to do, on the ground that such diploma does not furnish a sufficient guarantee of his possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, except in accordance with the following conditions, namely:—

- (a) Notice of every proposal for excluding the holders of any such diploma from practice or registration shall be given in such form and in such manner as the Central Government may by rules made in this behalf prescribe, to the university or other body granting that diploma, and where such proposal is not made by the Central Government, to the Central Government also.
- (b) No such proposal shall become operative until the expiration of twelve months after the notices referred to in clause (a) have been given.
- (c) Such a proposal shall not become operative or, as the case may be, shall cease to operate, if His Majesty's Privy Council, on an application made to them under sub-section (2) of section 120 of the Government of India Act, 1935, determine that the diploma in question ought to be recognised as furnishing such a sufficient guarantee as aforesaid.

Conditions for  
excluding from  
practice British  
subjects domiciled  
in Burma who hold  
medical diplomas  
granted in the United  
Kingdom or  
Burma on a  
similar ground.

4. A British subject domiciled in Burma who, by virtue of a medical diploma granted to him in the United Kingdom or Burma, is, or is entitled to be, registered in the United Kingdom as a qualified medical practitioner shall not, by or under any law for the time being in force, be excluded from practising medicine, surgery or midwifery in British India

or in any part thereof, or from being registered as qualified so to do, on the ground that such diploma does not furnish a sufficient guarantee of his possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, except in accordance with conditions such as are set out in clauses (a), (b) and (c) of section 8.

## THE COMMERCIAL DOCUMENTS EVIDENCE ACT, 1939.

ACT No. XXX OF 1939<sup>1</sup>.

[26th September, 1939.]

An Act to amend the Law of Evidence with respect to certain commercial documents.

WHEREAS it is expedient to amend the Law of Evidence with respect to certain commercial documents;

It is hereby enacted as follows:—

1. (1) This Act may be called the Commercial Documents Evidence Act, 1939. Short title and extent.

(2) It extends to the whole of British India.

2. Notwithstanding anything contained in the Indian Evidence Act, 1872, statements of facts in issue or of relevant facts made in any document included in the Schedule as to matters usually stated in such document shall be themselves relevant facts within the meaning of that Act. Statements of relevant facts in scheduled documents to be themselves relevant facts.

I of 1872.

<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1937, Pt. V, p. 119; for the Report of Select Committee see *ibid.*, 1939, Pt. V, p. 157.

This Act has been applied to—

British Baluchistan, see Gazette of India, 1940, Pt. I, p. 790;

the Darjeeling district and the partially excluded areas of the Mymensingh district with effect from the 8th February,\* 1940, by Bengal Government Notification No. 361-J., dated 31st January, 1940.

Presumption  
as to genuine-  
ness of docu-  
ments.

3. For the purposes of the Indian Evidence Act, of 1872, and notwithstanding anything contained therein, a Court—

(a) shall presume, within the meaning of that Act, in relation to documents included in Part I of the Schedule, and

(b) may presume, within the meaning of that Act, in relation to documents included in Part II of the Schedule,—

that any document purporting to be a document included in Part I or Part II of the Schedule, as the case may be, and to have been duly made by or under the appropriate authority, was so made and that the statements contained therein are accurate.

Definition.

4. In the Schedule the expression “recognised Chamber of Commerce” means a Chamber of Commerce recognised by the Government of its country as being competent to issue certificates of origin, and includes any other association similarly recognised.

## THE SCHEDULE.

(See sections 2 and 3.)

### PART I.

*Documents in relation to which the Court “SHALL presume”.*

1. Lloyd’s Register of Shipping.
2. Lloyd’s Daily Shipping Index.
3. Lloyd’s Loading List.
4. Lloyd’s Weekly Casualty Reports.
5. Certificate of delivery of goods to the Manchester Ship Canal Company.
6. Official log book, Supplementary Official log book and official wireless log kept by a British ship.
7. Certificate of Registry, Safety Certificate, Safety Radio-Telegraphy Certificate, Exemption Certificate, Certificate of Survey, Declaration of Survey, International Load Line Certificate, British India Load Line Certificate, Report of Survey of a ship provisionally detained as unsafe, Report of Survey to be served upon the master of a ship declared unsafe upon survey, Docking Certificate, Memorandum issued under Article 56 of the International Convention for the Safety of Life at Sea, 1929.

8. Certificates A and B, issued under the Indian Merchant Shipping Act, 1923.

9. The following documents relating to marine insurance, namely, insurance policy, receipt for premium, certificate of insurance and insurance cover note.

10. Certificate concerning the loss of country craft issued by the appropriate authority under Department of Commerce, Mercantile Marine Department Circular No. 2 of 1938.

11. Protest made before a Notary Public or other duly authorised official by a master of a ship relating to circumstances calculated to affect the liability of the ship-owner.

12. Licence or permit for radio-telegraph apparatus carried in ships or aircraft.

13. Certificate of registration of an aircraft granted by the Government of the country to which the aircraft belongs.

14. Certificate of airworthiness of an aircraft granted or validated by, or under the authority of, the Government of the country to which the aircraft belongs.

15. Licences and certificates of competency of aircraft personnel granted or validated by, or under the authority of, the Government of the country to which the personnel belongs.

16. Ground Engineer's Licence issued by a competent authority authorised in this behalf by Government.

17. Consular Certificate in respect of goods shipped or shut out, consular certificates of origin, and consular invoice.

18. Certificate of origin of goods issued (but not merely attested) by a recognised Chamber of Commerce, or by a British Consular officer or British or Indian Trade Commissioner or Agent.

19. Receipt for payment of customs duty issued by a Customs authority.

20. Schedule issued by a Port, Dock, Harbour, Wharfage or Warehouse authority, or by a Railway company, showing fees, dues, freights or other charges for the storage, transport or other services in connection with goods.



21. Tonnage schedule and schedule of fees, commission or other charges for services rendered, issued by a recognised Chamber of Commerce.

22. The publication known as the Indian Railway Conference Association Coaching and Goods Tariffs.

23. Copy, certified by the Registrar of Companies, of the memorandum or the articles of association of a company, filed under the Indian Companies Act, 1913.

24. Protest, noting and certifying the dishonour of a bill of exchange, made before a Notary Public or other duly authorised official.

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## PART II.

*Documents in relation to which the Court "MAY presume".*

1. Survey Report issued by a competent authority—

- (i) in respect of cargo loaded; or
- (ii) certifying the quantity of coal loaded; or
- (iii) in respect of the security of hatches.

2. Official log book, Supplementary Official log book and official wireless log kept by a foreign ship.

3. Dock certificate, dock chalan, dock receipt or warrant, Port Warehouse certificate or warrant, issued by, or under the authority of, a Port, Dock, Harbour or Wharfage authority.

4. Certificate issued by a Port, Dock, Harbour, Wharfage or other authority having control of acceptance of goods for shipping, transport or delivery, relating to the date or time of shipment of goods, arrival of goods for acceptance, arrival of vessels or acceptance or delivery of goods, or to the allocation of berthing accommodation to vessels.

5. Export Application issued by a Port authority showing dues paid, weight and measurement and the shutting out of a consignment.

6. Certificate or receipt showing the weight or measurement of a consignment issued by the official measurer of the Conference Lines, or by a sworn or licensed measurer, or by a recognised Chamber of Commerce.

7. Reports and publications issued by a Port authority showing the movement of vessels, and certificates issued by such authority relating to such movements.

8. Certificate of safety for flight signed by a licensed Ground Engineer.

9. Aircraft Log Book, Journey Log Book and Log Book, maintained by the owner or operator in respect of aircraft.

10. Passenger List or Manifest of Goods carried in public transport aircraft.

11. Passenger ticket, issued by a steamship company or air transport company.

12. Air Consignment Note and Baggage Check, issued by an air transport company in respect of goods carried by air, and the counterfoil or duplicate thereof retained by the carrier.

13. Aircraft Load Sheet.

14. Storage warrant of a warehouse recognised by a Customs, Excise, Port, Dock, Harbour or Wharfage authority.

15. Acknowledgment receipt for goods granted by a Port, Dock, Harbour, Wharfage or Warehouse authority or by a Railway or Steamship company.

16. Customs or Excise pass and Customs or Excise permit or certificate, issued by a Customs or Excise authority.

17. *Force majeure* certificate issued by a recognised Chamber of Commerce.

18. Receipt of a Railway or Steamship company granted to a consignor in acknowledgment of goods entrusted to the company for transport.

19. Receipt granted by the Posts and Telegraphs Department.

20. Certificate or survey award issued by a recognised Chamber of Commerce relating to the quality, size, weight or valuation of any goods, count of yarn or percentage of moisture in yarn and other goods.

21. Copy, certified by the Registrar of Companies, of the Balance Sheet, Profit and Loss Account, and audit report of a company, filed with the said Registrar under the Indian Companies Act, 1913, and the rules made thereunder.

**THE DEFENCE OF INDIA ACT, 1939.**

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ACT No. XXXV OF 1939.<sup>1</sup>

[29th September, 1939.]

An Act to provide for special measures to ensure the public safety and interest and the defence of British India and for the trial of certain offences.

WHEREAS an emergency has arisen which renders it necessary to provide for special measures to ensure the public safety and interest and the defence of British India and for the trial of certain offences;

AND WHEREAS the Governor General in his discretion has declared by Proclamation under sub-section (1) of section 102 of the Government of India Act, 1935, that a grave emergency exists whereby the security of India is threatened by war;

28 Geo. 5,  
c. 2.

It is hereby enacted as follows.—

## CHAPTER I.

## PRELIMINARY.

1. (1) This Act may be called the Defence of India Act, 1939.

Short title,  
extent,  
commence-  
ment and  
duration.

(2) It extends to the whole of British India, and it applies also—

- (a) to British subjects and servants of the Crown in any part of India;
- (b) to British subjects who are domiciled in any part of India wherever they may be;

<sup>1</sup> For the Statement of Objects and Reasons, *see* Gazette of India, 1939, Pt. V, p. 183; for the Report of Select Committee, *see* *ibid.*, p. 193.

This Act has been applied to—

- British Baluchistan, with modifications, *see* Gazette of India, Extraordinary, 1939, p. 470;
- the Chittagong Hill Tracts subject to modifications and exceptions, with effect from 17th February, 1940, by Bengal Government Notification No. 1940-E. A., dated 17th February, 1940;
- the Darjeeling district and the partially excluded areas of the Mymensingh district, subject to modifications as regards sub-section (3) of section 1, by Bengal Government Notification No. 6803-P., dated 11th December, 1939.

(Chapter I.—Preliminary. Chapter II.—Emergency Powers.)

(c) in respect of the regulation and discipline of any naval, military or air force raised in British India, to members of, and persons attached to, employed with, or following, that force, wherever they may be; and

(d) to, and to persons on, ships and aircraft registered in British India wherever they may be.

(3) This section shall come into force at once, and the remaining provisions<sup>1</sup> of this Act shall come into force in such areas and on such date or dates as the Central Government may, by notification in the official Gazette, appoint.

(4) It shall be in force during the continuance of the present war and for a period of six months thereafter.

## CHAPTER II.

### EMERGENCY POWERS.

Power to  
make rules.

2. (1) The Central Government may, by notification in the official Gazette, make such rules as appear to it to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), the rules may provide for, or may empower any authority to make orders providing for, all or any of the following matters, namely:—

- (i) ensuring the safety and welfare of His Majesty's forces, ships and aircraft, and preventing the prosecution of any purpose likely to prejudice the operations of His Majesty's forces or the forces of His Majesty's allies;
- (ii) prohibiting anything likely to prejudice the training, discipline or health of His Majesty's forces;

<sup>1</sup> Chapters II and IV came into force in the whole of British India on the 14th November, 1939, see Gazette of India, Extraordinary, 1939, p. 467.

*(Chapter II.—Emergency Powers.)*

- (iii) preventing any attempt to tamper with the loyalty of persons in, or to dissuade (otherwise than with advice given in good faith to the person dissuaded for his benefit or that of any member of his family or any of his dependents) persons from entering, the service of His Majesty;
- (iv) preventing anything likely to assist the enemy or to prejudice the successful conduct of war, including—
  - (a) communications with the enemy or agents of the enemy,
  - (b) acquisition, possession without lawful authority or excuse and publication of information likely to assist the enemy,
  - (c) contribution to, participation in, or assistance in, the floating of loans raised by or on behalf of the enemy, and
  - (d) advance of money to, or contracts or commercial dealings with, the enemy, enemy subjects or persons residing, carrying on business, or being in enemy territory;
- (v) preventing the spreading without lawful authority or excuse of false reports or the prosecution of any purpose likely to cause disaffection or alarm, or to prejudice His Majesty's relations with foreign powers<sup>1</sup>[or with States in India, or to prejudice the maintenance of peaceful conditions in the tribal areas,], or to promote feelings of enmity and hatred between different classes of His Majesty's subjects;

*Explanation.*—To point out, without malicious intention and with an honest view to their removal, matters which are producing, or have a tendency to produce, feelings of enmity or hatred between different classes of His Majesty's subjects does not amount to promoting such feelings within the meaning of this clause.

- (vi) requiring the publication of news and information;

<sup>1</sup> Ins. by s. 2 of the Defence of India (Amendment) Act, 1940 (19 of 1940).

*(Chapter II.—Emergency Powers.)*

- (vii) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient, and the removal of persons from such areas;
- (viii) requiring any person or class of persons to comply with a scheme of defence;
- (ix) ensuring the safety of ports, dockyards, light-houses, lightships, aerodromes, railways, telegraphs, post offices, signalling apparatus and all other means of communication, sources of water-supply, works for the supply of water, gas or electricity and any other place or thing the protection of which is necessary for the defence of British India;
- (x) the apprehension and detention in custody of any person reasonably suspected of being of hostile origin or of having acted, acting or being about to act, in a manner prejudicial to the public safety or interest or to the defence of British India, the prohibition of such person from entering or residing or remaining in any area, and the compelling of such person to reside and remain in any area, or to do, or abstain from doing, anything;
- (xi) the control of persons entering, departing from, or travelling in, British India, and of foreigners residing or being in British India;
- (xii) prohibiting or regulating traffic, and the use of vessels, buoys, lights and signals, in ports and territorial, tidal and inland waters;
- (xiii) restricting the charter of foreign vessels,
- (xiv) regulating the structure and equipment of vessels used or likely to be used by the Central Government, for the purpose of ensuring the safety thereof and of persons therein;
- (xv) regulating work in dockyards and shipyards in respect of the construction and repairs of vessels;

*(Chapter II.—Emergency Powers.)*

- (xvi) prohibiting or regulating the sailings of vessels from ports, traffic at aerodromes and the movement of aircraft, and traffic on railways, tramways and roads, and reserving, and requiring to be adapted, for the use of the Central Government, all or any accommodation in vessels, aircraft, railways, tramways or road vehicles for the carriage of persons, animals or goods;
- (xvii) impressment of vessels, aircraft, vehicles and animals for transport;
- (xviii) prohibiting or regulating the use of postal, telegraph or telephonic services, including the taking possession of such services and the delaying, seizing, intercepting or interrupting of postal articles or telegraphic or telephonic messages;
- (xix) regulating the delivery otherwise than by postal or telegraphic service of postal articles and telegrams;
- (xx) the control of any trade or industry for the purpose of regulating or increasing the supply of, and the obtaining of information with regard to, articles or things of any description whatsoever which can be used in connection with the conduct of war or for maintaining supplies and services essential to the life of the community;
- (xxi) ensuring the ownership and control of mines by British subjects;
- (xxii) controlling the use or disposal of, or dealings in, coin, bullion, securities or foreign exchange;
- (xxiii) the control of any road or pathway, waterway, ferry or bridge, river, canal or other source of water-supply;
- (xxiv) the requisitioning of any property, movable or immovable, including the taking possession thereof and the issue of any orders in respect thereof;
- (xxv) prohibiting or regulating the possession, use or disposal of—
  - (a) explosives, inflammable substances, arms and ammunitions of war,



*(Chapter II.—Emergency Powers.)*

- (b) vessels,
- (c) wireless telegraphic apparatus,
- (d) aircraft, and
- (e) photographic and signalling apparatus and any means of recording information;
- (xxvi) applying the provisions of the Sea Customs Act, 1878, and in particular section VIII of 1878, 19 thereof, to the prohibition or restriction of the import or export of goods to a particular person or a particular class of persons;
- (xxvii) prohibiting or regulating the bringing into, or taking out of, British India and the possession, use or transmission of ciphers and other secret means of communicating information;
- (xxviii) prohibiting or regulating the publication of inventions and designs;
- (xxix) preventing the disclosure of official secrets;
- (xxx) prohibiting or regulating meetings, assemblies, fairs and processions;
- (xxxi) preventing or controlling any use, calculated to prejudice the public safety, the maintenance of public order, the defence of British India or the prosecution of war, of uniforms, flags and insignia and of anything similar thereto;
- (xxxii) ensuring the accuracy of any report or declaration legally required of any person;
- (xxxiii) preventing the unauthorised change of names;
- (xxxiv) preventing anything likely to cause misapprehension in respect of the identity of any official person, official document or official property or in respect of the identity of any person, document or property purporting to be, or resembling, an official person, official document or official property;
- (xxzv) entry into, and search of, any place reasonably suspected of being used for any purpose prejudicial to the public safety or interest, to the defence of British India or to the efficient prosecution of war, and for

*(Chapter II.—Emergency Powers.)*

the seizure and disposal of anything found there and reasonably suspected of being used for such purpose.

(3) The rules made under sub-section (1) may further—

- (i) provide for the arrest and trial of persons contravening any of the rules;
- (ii) provide that any contravention of, or any attempt to contravene, and any abetment of, or attempt to abet, the contravention of any of the provisions of the rules, or any order issued under any such provision, shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both;
- (iii) provide for the seizure, detention and forfeiture of any property in respect of which such contravention, attempt or abetment as is referred to in the preceding clause has been committed;
- (iv) confer power and impose duties—
  - (a) upon the Central Government or officers and authorities of the Central Government as respects any matter, notwithstanding that that matter is one in respect of which the Provincial Legislature also has power to make laws, and
  - (b) upon any Provincial Government or officers and authorities of any Provincial Government as respects any matter notwithstanding that that matter is one in respect of which the Provincial Legislature has no power to make laws;
- (v) prescribe the duties and powers of public servants and other persons as regards preventing the contravention of, or securing the observance of, the rules;
- (vi) provide for preventing obstruction and deception of, and disobedience to, any person acting, and interference with any notice issued, in pursuance of the rules;
- (vii) prohibit attempts by any person to screen from punishment any one, other than the husband or wife of such person, contravening any of the rules;

*(Chapter II.—Emergency Powers.)*

Temporary  
amendments  
of Act.

6. During the continuance of this Act,—

(1) section 1 of the Geneva Convention Act, 1911, shall have effect in British India as if, in sub-section (1) thereof, for the words “shall be liable on summary conviction to a fine not exceeding ten pounds”, the words “shall be punishable with imprisonment for a term which may extend to six months and shall also be liable to a fine” had been substituted: I & 2 Geo. 5, c. 20.

(2) section 5 of the Indian Official Secrets Act, 1923, shall have effect as if—

XIX of 1923.

(a) in sub-section (1) thereof, after the words “in his possession or control” the words “any information likely to assist the enemy, as defined in the rules made under the Defence of India Act, 1939, or” had been inserted, and after the words “in such a place” the words “or which relates to, or is used in, a protected area, as defined in the rules made under the Defence of India Act, 1939, or relates to anything in such an area,” had been inserted; and

(b) for sub-section (4) thereof, the following sub-section had been substituted, namely:—

“(4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to five years, or, if such offence is committed with intent to assist any State at war with His Majesty, or to wage war against His Majesty, with death, or transportation for life, or imprisonment for a term which may extend to ten years, and shall in either case also be liable to fine.”;

(3) the Indian Press (Emergency Powers) Act, 1931, shall have effect as if in sub-section (1) of section 4 thereof, after clause (b), the following word and clause had been inserted, namely:—

“or

(bb) directly or indirectly convey any ‘confidential information’, any ‘information likely to assist the enemy’ or any ‘prejudicial report’, as defined in the rules made under the Defence of India Act, 1939, or

*(Chapter II.—Emergency Powers.)*

are calculated to instigate the contravention of any of those rules,";

XXXII of 1934.

(4) the Indian Aircraft Act, 1934, shall have effect as if—

(a) at the end of clause (r) of sub-section (2) of section 5 the following words had been inserted, namely:—

“including the taking of steps necessary to secure compliance with, or to prevent contravention of, the rules regulating such matters, or, where any such rule has been contravened, to rectify, or to enable proceedings to be taken in respect of, such contravention”;

(b) in clause (b) of sub-section (1) of section 8, for the words, brackets, letters and figures “clause (h) or clause (i) of sub-section (2) of section 5”, the words, brackets, letters and figures “clauses (d), (e), (h), (i), (k) or (l) of sub-section (2) of section 5, or the commission of an offence punishable under section 11” had been substituted:

(c) in section 11, after the words “in the air” the words “or in such a manner as to interfere with any of His Majesty’s forces, ships or aircraft” had been inserted;

(d) in section 13, for the words, brackets, figures and letters “clause (i) or clause (l) of sub-section (2) of section 5” the words, brackets, figures and letters “clauses (c), (d), (e), (h), (i), (j), (k) or (l) of sub-section (2) of section 5, or punishable under section 11” had been substituted; and

(e) section 14 had been omitted; and

XXXIV of  
1934.

(5) the Indian Navy (Discipline) Act, 1934, shall have effect as if for section 90 of the Naval Discipline Act as set forth in the First Schedule to the first named Act the following section had been substituted, namely:—

“90. (1) If any person who would not otherwise be subject to this Act enters into an engagement with the Central Government to serve His Majesty—

(a) in a particular ship, or

(b) in such particular ship or in such ships as the Officer Commanding the Indian Navy, or any officer empowered in this behalf by the Officer Commanding the Indian Navy, may from time to time determine,

*(Chapter II.—Emergency Powers.)*

and agrees to become subject to this Act upon entering into the engagement, that person shall, so long as the engagement remains in force, and notwithstanding that for the time being he may not be serving in any ship, be subject to this Act, and the provisions of this Act shall apply in relation to that person, as if, while subject to this Act, he belonged to His Majesty's navy and were borne on the books of one of His Majesty's ships in commission.

(2) The Central Government may by order direct that, subject to such exceptions as may in particular cases be made by or on behalf of the Officer Commanding the Indian Navy, persons of any such class as may be specified in the order shall, while subject to this Act by virtue of this section, be deemed to be officers or petty officers, as the case may be, for the purposes of this Act or of such provisions of this Act as may be so specified; and any such order may be varied or revoked by a subsequent order."

Saving and temporary amendment of Act VIII of 1938.

7. (1) Notwithstanding anything contained in the Indian Tea Control Act, 1938, the Central Government may appoint any person to be an additional member of, and to act as Chairman of, the Indian Tea Licensing Committee during the continuance of this Act, and on such appointment being made and until this Act ceases to be in force, the Chairman of the said Committee elected under section 5 of that Act shall cease to exercise the functions of Chairman. VIII of 1938.

(2) If in pursuance of any scheme for the control of import of Indian tea into the United Kingdom, the Central Government considers it necessary or expedient so to do, it may by order direct the Indian Tea Licensing Committee to apportion the requirement of the United Kingdom among the tea estates in accordance with such principles as may be laid down in the order, and the said Committee shall comply with such order.

(3) If at any time during the continuance of this Act, the agreement referred to in the preamble to the Indian Tea Control Act, 1938, is determined or otherwise ceases to be valid as between the parties thereto, the provisions of that Act shall, notwithstanding the said determination or invalidity of the agreement, continue in force: VIII of 1938.

(Chapter II.—*Emergency Powers.*.. Chapter III.—*Special Tribunals.*)

Provided that nothing in this sub-section shall be construed as continuing the Indian Tea Control Act, 1938, in force after the 31st day of March, 1943.

### CHAPTER III.

#### SPECIAL TRIBUNALS.

8. (1) The Provincial Government may for the whole or any part of the Province constitute Special Tribunals which shall consist of three members appointed by the Provincial Government. Constitution of Special Tribunals.

(2) No person shall be appointed as a member of a Special Tribunal unless he—

26 Geo. 5, c. 2.

(a) is qualified under sub-section (3) of section 220 of the Government of India Act, 1935, for appointment as a Judge of a High Court; or

V of 1898.

(b) has for a total period of not less than three years exercised, whether continuously or not, the powers under the Code of Criminal Procedure, 1898 (hereafter in this Chapter referred to as the Code) of any one or more of the following, namely:—

(i) Sessions Judge, Additional Sessions Judge, Chief Presidency Magistrate, Additional Chief Presidency Magistrate,

(ii) District Magistrate, Additional District Magistrate.

(3) At least one member of a Special Tribunal shall be qualified for appointment thereto under clause (a) of sub-section (2), and where only one member is so qualified under that clause, at least one other member shall be qualified for appointment under clause (b) of that sub-section by virtue of having exercised powers exclusive of those specified in sub-clause (i) of the said clause (b).

9. The Provincial Government may, by general or special order, direct that a Special Tribunal shall try any offence— Jurisdiction of Special Tribunals.

(a) under any rule made under section 2, or

- (b) punishable with death, transportation or imprisonment for a term which may extend to seven years,—

triable by any Court having jurisdiction within the local limits of the jurisdiction of the Special Tribunal, and may in any such order direct the transfer to the Special Tribunal of any particular case from any other Special Tribunal or any other Criminal Court not being a High Court.

Procedure of  
Special  
Tribunals.

10. (1) A Special Tribunal may take cognizance of offences without the accused being committed to it for trial.

(2) Save in cases of trials of offences punishable with death or transportation for life, it shall not be necessary in any trial for a Special Tribunal to take down the evidence at length in writing, but the special Tribunal shall cause a memorandum of the substance of what each witness deposes to be taken down in the English language, and such memorandum shall be signed by a member of the Special Tribunal and shall form part of the record.

(3) A Special Tribunal shall not be bound to adjourn any trial for any purpose unless such adjournment is, in its opinion, necessary in the interests of justice.

(4) A Special Tribunal shall not, merely by reason of a change in its members, be bound to recall and rehear any witness who has given evidence, and it may act on the evidence already recorded by or produced before it.

(5) After an accused person has once appeared before it, a Special Tribunal may try him in his absence if, in its opinion, his absence has been brought about by the accused himself for the purpose of impeding the course of justice, or if the behaviour of the accused in Court has been such as, in the opinion of the Special Tribunal, to impede the course of justice.

(6) In the event of any difference of opinion among the members of a Special Tribunal, the opinion of the majority shall prevail.

*(Chapter III.—Special Tribunals.)*

(7) The Provincial Government may, by notification in the official Gazette, make rules providing for—

- (i) the times and places at which Special Tribunals may sit; and
- (ii) the procedure to be adopted in the event of any member of a Special Tribunal being prevented from attending throughout the trial of any accused person.

(8) A Special Tribunal shall, in all matters in respect to which no procedure has been prescribed by this Act or by rules made thereunder, follow the procedure prescribed by the Code for the trial of warrant cases by Magistrates.

11. In addition, and without prejudice, to any powers which a Special Tribunal may possess by virtue of any law for the time being in force to order the exclusion of the public from any proceedings, if at any stage in the course of a trial of any person before a Special Tribunal application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the trial would be prejudicial to the safety of the State, that all or any portion of the public shall be excluded during any part of the hearing, the Special Tribunal may make an order to that effect, but the passing of sentence shall in any case take place in public.

*Exclusion of public from proceedings of Special Tribunals.*

12. A Special Tribunal shall have all the powers conferred by the Code on a Court of Session exercising original jurisdiction.

*Powers of Special Tribunals.*

13. (1) A Special Tribunal may pass any sentence authorised by law.

*Sentences of Special Tribunals.*

(2) A person sentenced by a Special Tribunal—

- (a) to death or transportation for life, or
- (b) to imprisonment for a term extending to ten years under section 5 of this Act or under sub-section (4) of section 5 of the Indian Official Secrets Act, 1923, as amended by section 6 of this Act—

XIX of 1923.

shall have a right of appeal to the High Court within whose jurisdiction the sentence has been passed, but save as aforesaid and notwithstanding the provisions



*(Chapter III.—Special Tribunals. Chapter IV.—  
Supplemental)*

of the Code, or of any other law for the time being in force, or of any thing having the force of law by whatsoever authority made or done, there shall be no appeal from any order or sentence of a Special Tribunal, and no Court shall have authority to revise such order or sentence, or to transfer any case from a Special Tribunal, or to make any order under section 491 of the Code, or have any jurisdiction of any kind in respect of any proceedings of a Special Tribunal.

(3) The powers conferred upon the Provincial Government and the Governor General by Chapter XXIX of the Code shall apply in respect of a person sentenced by a Special Tribunal.

## CHAPTER IV.

### SUPPLEMENTAL.

**Jurisdiction  
of ordinary  
Courts.**

14. Save as otherwise expressly provided by or under this Act, the ordinary criminal and civil Courts shall continue to exercise jurisdiction.

**Ordinary  
avocations of  
life to be  
interfered  
with as little  
as possible.**

15. Any authority or person acting in pursuance of this Act shall interfere with the ordinary avocations of life and the enjoyment of property as little as may be consonant with the purpose of ensuring the public safety and interest and the defence of British India.

**Savings as to  
orders.**

16. (1) No order made in exercise of any power conferred by or under this Act shall be called in question in any Court.

(2) Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act, a Court shall, within the meaning of the Indian Evidence Act, 1872, presume that such order was so made by that authority.

1 of 1872.

**Protection of  
action taken  
under the  
Act.**

17. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder:

(2) Save as otherwise expressly provided under this Act, no suit or other legal proceeding shall lie against the Crown for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

18. Every provision of law for the time being in force which gives protection, whether specifically or otherwise, to members of His Majesty's military forces or of the police forces in British India from <sup>Protection from Prosecution, etc., of members of military and police forces of Indian States while serving His Majesty.</sup> <sup>1</sup>[or in respect of] any prosecution or other legal proceedings or from <sup>1</sup>[or in respect of], any other liability shall apply also to members of the military or police forces respectively of any Indian State, while attached to, operating with or assisting any of His Majesty's military forces or any police force in British India.

28 Geo. 5, c. 2.

19. (1) Where by or under any rule made under this Act any action is taken of the nature described in sub-section (2) of section 299 of the Government of India Act, 1935, there shall be paid compensation, the amount of which shall be determined in the manner, and in accordance with the principles, hereinafter set out, that is to say:—

- (a) Where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement.
- (b) Where no such agreement can be reached, the Central Government shall appoint as arbitrator a person qualified under sub-section (3) of section 220 of the above-mentioned Act for appointment as a Judge of a High Court.
- (c) The Central Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property acquired, to assist the arbitrator, and where such nomination is made, the person to be compensated may also nominate an assessor for the said purpose.
- (d) At the commencement of the proceedings before the arbitrator, the Central Government and the person to be compensated shall state what in their respective opinions is a fair amount of compensation.

<sup>1</sup> Ins. by s. 3 of the Defence of India (Amendment) Act, 1940 (19 of 1940).

*(Chapter IV.—Supplemental.)*

- (e) The arbitrator in making his award shall have regard to—
- (i) the provisions of sub-section (1) of section 23 of the Land Acquisition Act, 1894, so far as the same can be made <sup>I of 1894.</sup> applicable; and
  - (ii) whether the acquisition is of a permanent or temporary character.
- (f) An appeal shall lie to the High Court against an award of an arbitrator except in cases where the amount thereof does not exceed an amount prescribed in this behalf by rule made by the Central Government.
- (g) Save as provided in this section and in any rules made thereunder, nothing in any law for the time being in force shall apply to arbitrations under this section.

(2) The Central Government may make rules for the purpose of carrying into effect the provisions of this section.

(3) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

- (a) the procedure to be followed in arbitrations under this section;
- (b) the principles to be followed in apportioning the costs of proceedings before the arbitrator and on appeal;
- (c) the maximum amount of an award against which no appeal shall lie.

**Definition.**

20. In this Act, unless there is anything repugnant in the subject or context, the expression "Provincial Government" means, in relation to a Chief Commissioner's Province, the Chief Commissioner.

**Repeal and saving.**

21. The Defence of India Ordinance, 1939, is hereby repealed; and any rules made, anything done and any action taken in exercise of any power conferred by or under the said Ordinance shall be deemed to have been made, done or taken in exercise of powers conferred by or under this Act as if this Act had commenced on the 3rd day of September, 1939. Ord. V of 1939

## THE INDIAN AIR FORCE VOLUNTEER RESERVE (DISCIPLINE) ACT, 1939.

ACT No. XXXVI OF 1939.<sup>1</sup>

[29th September, 1939.]

An Act to provide for the discipline of members of the Indian Air Force Volunteer Reserve raised in British India on behalf of His Majesty.

**W**HEREAS it is expedient to provide for the discipline of members of the Indian Air Force Volunteer Reserve raised in British India on behalf of His Majesty;

It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Air Force Volunteer Reserve (Discipline) Act, 1939.

Short title,  
extent and  
commence-  
ment.

(2) It extends to the whole of British India and applies to members of the Indian Air Force Volunteer Reserve wherever they may be.

(3) It shall come into force on such date<sup>2</sup> as the Central Government may, by notification in the official Gazette, appoint in this behalf.

2. The Central Government may make rules for the government, discipline and regulation of the Indian Air Force Volunteer Reserve.

Power to  
make rules  
for regulation  
of the Indian  
Air Force  
Volunteer  
Reserve.

3. Every member of the Indian Air Force Volunteer Reserve, while undergoing training in any unit, or otherwise, in pursuance of rules made under section 2, or when called into actual service in the Indian Air Force, in pursuance of the said rules, shall be

Liability to  
Indian Air  
Force Act,  
1932.

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<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1939, Pt. V, p. 221.

This Act has been applied to—

British Baluchistan, see Gazette of India, 1940, Pt. I, p. 790;

the Darjeeling district and the partially excluded areas of the Mymensingh district, by Bengal Government Notification No. 372-P., dated 19th January, 1940;

the Chittagong Hill Tracts with effect from 6th January, 1940, by Bengal Government Notification No. 820-E.A., dated 23rd January, 1940.

<sup>2</sup> The 6th January 1940, see Notification No. 15, dated 6th January, 1940, Gazette of India, 1940, Pt. I, p. 14.

subject to the Indian Air Force Act, 1932, in the same XIV of 1932.  
manner as a person belonging to His Majesty's Indian  
Air Force, and shall continue to be so subject until  
duly released from such training or service, as the  
case may be.

Penalty for  
failure to  
attend when  
required or  
called up.

4. (1) If any member of the Indian Air Force Volunteer Reserve, when required, in pursuance of rules made under section 2, to join a unit or attend at any place for the purpose of undergoing training, fails without reasonable excuse to join or attend in accordance with such requirement, he shall be punishable with fine which may extend to two hundred rupees.

(2) If any member of the Indian Air Force Volunteer Reserve, when called into actual service in the Indian Air Force, and required by such call to join any unit or attend at any place, fails without reasonable excuse to comply with such requirement at or within such time as the Central Government may, by order, direct, he shall be liable to be apprehended and punished in the same manner as a person in or belonging to the Indian Air Force deserting or improperly absenting himself from duty, except that the punishment shall not exceed imprisonment which may extend to two years.

Rule of  
evidence.

5. When any member of the Indian Air Force Volunteer Reserve is required, in pursuance of the rules made under section 2, to join any unit or attend at any place for the purpose of undergoing training, or is called into actual service in the Indian Air Force, a certificate purporting to be signed by an officer appointed in this behalf under the said rules and stating that the said member failed to join or attend in accordance with such requirement or call shall, without proof of the signature or appointment of such officer, be evidence of the matter stated therein.

Jurisdiction.

6. No Court inferior to that of a Presidency Magistrate or Magistrate of the first class shall try an offence punishable under sub-section (1) of section 4.

Repeal and  
saving.

7. The Indian Air Force Volunteer Reserve (Discipline) Ordinance, 1939, is hereby repealed; and any rules made, anything done and any action taken under the said Ordinance shall be deemed to have been made, done or taken under this Act as if this Act had commenced on the 16th day of September, 1939.

Ord. VII  
of 1939.

# THE REGISTRATION (EMERGENCY POWERS) ACT, 1940.

ACT No. I OF 1940.<sup>1</sup>

[23rd February, 1940.]

An Act to provide for the registration of certain European British subjects.

**W**HEREAS it is expedient to provide for the registration of certain European British subjects ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Registration (Emergency Powers) Act, 1940. Short title, extent, commencement and duration.

(2) It extends to the whole of British India, and applies also to European British subjects in any part of India.

(3) It shall come into force on such date<sup>2</sup> as the Central Government may, by notification in the official Gazette, appoint.

(4) It shall be in force during the continuance of the present war and for a period of six months thereafter.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions

(a) “European British subject” means any subject of His Majesty of European descent in the male line, born, naturalised or domiciled in the British Islands or in any Dominion as defined in the Statute of Westminster, 1931, or in any Colony except Ceylon;

22 Geo. 5, c. 4.

<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1940, Pt. V, p. 86.

This Act has been applied to—

The Darjeeling district and the partially excluded areas of the Mymensingh district, see Bengal Government Notification No. 1431-P., dated 5th March, 1940, Calcutta Gazette, dated 7th March, 1940;

the Chittagong Hill Tracts, see Notification No. 3008-E.A., dated 11th March, 1940, Calcutta Gazette, dated 14th March, 1940.

\* The 27th February, 1940, see Gazette of India, Extraordinary, 1940, p. 38.

- (b) "prescribed" means prescribed by rules made under this Act.

Obligation to register.

3. (1) Every male European British subject for the time being in India (not being—

- (a) a member of His Majesty's naval, military or air forces, or

- (b) a person who is enrolled under the Auxiliary Force Act, 1920, or is in holy orders, or is a regular minister of any religious denomination),

XLIX of 1920.

who for the time being has attained the age of sixteen years but has not attained the age of fifty years, shall, within the prescribed period, correctly fill up, or cause so to be filled up, to the best of his knowledge and belief, sign and lodge with the appropriate registration authority specified in the First Schedule, or such other registration authority as may be prescribed, the form set out in the Second Schedule, and if any such European British subject claims not to be ordinarily resident in India, he shall lodge with the said form a statement of such claim.

(2) If any registration authority has reason to believe that any person is a European British subject to whom the provisions of sub-section (1) are applicable, he may, by order in writing, require such person to furnish such particulars as may be specified in the order within such time as may be so specified, and such person, whether or not he is a European British subject to whom the provisions of the said sub-section are applicable, shall within the specified time furnish correctly to the best of his knowledge and belief the said particulars to the said registration authority in such form or manner as such order may require, and shall sign the same; and if any such person claims that he is not a European British subject to whom the provisions of sub-section (1) are applicable, he shall furnish a statement of such claim with the particulars as aforesaid.

(3) If any person refuses or, without lawful excuse (the burden of proving which shall lie upon such person), neglects fully to comply with the requirements of sub-section (1) or of any order made under sub-section (2), he shall be punishable with fine which may extend to five hundred rupees.

Act of 1860.

(4) Every registration authority under this Act shall be deemed to be a public servant within the meaning of the Indian Penal Code.

4. If any question arises with reference to this Act or any rule made thereunder whether a person is a European British subject to whom the provisions of sub-section (1) of section 3 are applicable, a person appointed in writing in this behalf by the prescribed authority may apply to the District Magistrate or to any officer specially empowered in this behalf by the Central Government in the area in which the person to whom the dispute relates is for the time being present, and such Magistrate or other officer, after hearing such person or giving him a reasonable opportunity for being heard, shall summarily determine the question, and the decision of such Magistrate or other officer shall be final.

Determination of disputes as to applicability of this Act.

5. (1) The Central Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

Power of Central Government to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe registration authorities, in addition to those specified in the First Schedule;
- (b) prescribe the time within which the form set out in the Second Schedule shall be lodged with the registration authority;
- (c) prescribe authorities who may make the appointment referred to in section 4;
- (d) provide for the issue of certificates of registration;
- (e) provide for the preparation, compilation and correction of a register, and require the attendance of persons for any of such purposes;
- (f) require the notification of changes of address of registered persons.

(3) Rules made under this section may provide that any contravention thereof or of any order or notice issued thereunder shall be punishable with fine which may extend to five hundred rupees.

6. Nothing in this Act shall apply to any person confined for the time being in a prison or lunatic asylum.

Act not to apply to certain persons.



Repeal of  
Ordinance II  
of 1939.

7. The Registration Ordinance, 1939, is hereby repealed; but any rules made, anything done and any action taken under the said Ordinance shall be deemed to have been made, done or taken under the corresponding provisions of this Act, and any offence committed against or any proceedings commenced under the said Ordinance, may be punished, or may be continued and completed as if such offence were committed against or such proceedings were commenced under this Act.

### THE FIRST SCHEDULE.

(See section 3.)

#### *Registration Authorities*

- |   |   |
|---|---|
| In the case of any servant of the Crown.                                  | The Head of the Office or Department in which he serves.  |
| In the case of any person in the employ of any public or local authority. | The chief executive officer of such authority.  |
| In the case of any person in the employ of any railway.                   | The Head of the Railway Administration.   |
| In any other case   | The District Magistrate of the district in which the person is for the time being resident, or in the case of a person resident in a Presidency-town, the Commissioner of Police. |

### THE SECOND SCHEDULE.

(See section 3.)

#### *Form of Particulars.*

1. Name in full.
2. Address.
3. Date of birth.
4. Whether single, married or widower.
5. Number of dependents, specifying their relationship, if any, to him.
6. Profession or occupation.
7. Name and nature of business, or name, address and nature of employer's business, or if employed in or under any Department of Government, the name of the Department.
8. Whether he has served, or undergone training of any description, in any naval, military or air force. If so, give particulars of such service or training including date and duration thereof.
9. Whether he possesses, or has possessed, a flying licence.

## THE FOREIGNERS ACT, 1940.

ACT No. II OF 1940.<sup>1</sup>

[23rd February, 1940.]

An Act to provide for the imposition of restrictions on foreigners.

**W**HEREAS it is expedient to provide for the imposition of restrictions on the entry of foreigners into British India, their presence therein and their departure therefrom;

It is hereby enacted as follows:—

1. (1) This Act may be called the Foreigners Act, 1940. Short title,  
extent and  
duration.

(2) It extends to the whole of British India.

(3) It shall be in force during the continuance of the present war and for a period of six months thereafter.

2. In this Act,—

Definitions.

(a) "foreigner" has the meaning assigned to it in the Foreigners Act, 1864, except that it does not include—

(i) any ruler or subject of any Indian State; or

(ii) any native of the tribal areas;

(b) "prescribed" means prescribed by orders made under this Act;

(c) "specified" means specified by direction of a prescribed authority.

3. (1) The Central Government may, by order, make provision, either generally with respect to all foreigners or with respect to any particular foreigner Power to make  
orders.

<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1940, Pt. V, p. 91.

This Act has been applied to—

British Baluchistan, and all tribal areas with modifications, see Gazette of India, Extraordinary, 1940, p. 81;

the Darjeeling district and the partially excluded areas of the Mymensingh district, see Notification No. 1535-P., dated 11th March, 1940, Calcutta Gazette, dated 14th March, 1940;

the Chittagong Hill Tracts, see Notification No. 2950-Ex., dated 9th March, 1940, Calcutta Gazette, dated 14th March, 1940.

or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into British India or their departure therefrom or their presence or continued presence therein.

(2) In particular, and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner—

(a) shall not enter British India, or shall enter British India only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed;

(b) shall not depart from British India, or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;

(c) shall not remain in British India, or in any prescribed area therein;

(d) shall remove himself to, and remain in, such area in British India as may be prescribed;

(e) shall comply with such conditions as may be prescribed or specified—

(i) requiring him to reside in a particular place;

(ii) imposing any restrictions on his movements;

(iii) requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;

(iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his hand-writing and signature to such authority and at such time and place as may be prescribed or specified;

(v) prohibiting him from association with persons of a prescribed or specified description;

- (vi) prohibiting him from engaging in activities of a prescribed or specified description;
- (vii) prohibiting him from using or possessing prescribed or specified articles; or
- (v.ii) otherwise regulating his conduct in any such particular as may be prescribed or specified;
- (f) shall enter into a bonā with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions; or
- (g) shall be arrested and detained or confined; and may make provision for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.

4. (1) Any foreigner (hereinafter referred to as an **Internee.** internnee) in respect of whom there is in force any order made under clause (g) of sub-section (2) of section 3, directing that he be detained or confined, shall be detained or confined in such place and manner and subject to such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline as the Central Government may from time to time determine.

(2) No person shall—

- (a) knowingly assist an internnee to escape from custody or knowingly harbour an escaped internnee; or
- (b) give an escaped internnee any assistance with intent thereby to prevent, hinder or interfere with the apprehension of the internnee.

(3) The Central Government may, by order, provide for regulating access to, and the conduct of persons in, places in British India where internnees are detained and for prohibiting or regulating the despatch or conveyance from outside such places to or for internnees therein of such articles as may be prescribed.

(4) No proceedings shall be taken by virtue of sub-section (2) or sub-section (3) against any person in respect of any act done by him when he is himself an internnee.

Change of  
name.

5. (1) No foreigner who was in British India or the date on which this Act came into force shall, while in British India after that date, assume or use or purport to assume or use for any purpose any name other than that by which he was ordinarily known immediately before the said date.

(2) Where, after the date on which this Act came into force, any foreigner carries on or purports to carry on (whether alone or in association with any other person) any trade or business under any name or style other than that under which that trade or business was being carried on immediately before the said date, he shall, for the purposes of sub-section (1), be deemed to be using a name other than that by which he was ordinarily known immediately before the said date.

(3) In relation to any foreigner who, not having been in British India on the date on which this Act came into force, thereafter enters British India, sub-sections (1) and (2) shall have effect as if for any reference in those sub-sections to the date on which this Act came into force there were substituted a reference to the date on which he first enters British India thereafter.

(4) For the purposes of this section—

(a) the expression “name” includes a surname, and

(b) a name shall be deemed to be changed if the spelling thereof is altered.

(5) Nothing in this section shall apply to the assumption or use—

(a) of any name in pursuance of a Royal licence; or

(b) by any married woman, of her husband's name.

Obligation of  
masters of  
vessels, etc.

6. Any District Magistrate and any Commissioner of Police or, where there is no Commissioner of Police, any Superintendent of Police, may, for any purpose connected with the enforcement of this Act or any order made thereunder, enter, with such assistance

as he may think fit, any vessel or aircraft at any port or place in British India and may—

(a) direct the master of the vessel or the pilot of the aircraft, as the case may be,—

(i) before any passenger disembarks, or before the vessel or aircraft leaves such port or place, as the case may be, to furnish a list in writing of the passengers who are on board or who have been carried on board at any time since the vessel or aircraft commenced its journey, or who have signified their intention of departing from British India on board such vessel or aircraft, setting out the ports or places at which they embarked, the ports or places of their disembarkation or intended disembarkation, and such other particulars as may be prescribed, and

(ii) to answer to the best of his ability any question relating to the passengers who are on board or who have disembarked in any part of British India; and

(b) if any foreigner seeking to enter British India on board such vessel or aircraft does not give satisfactory reasons for entering British India, either—

(i) refuse to allow such foreigner to disembark from such vessel or aircraft, or

(ii) place him under such restraint as may be prescribed or specified.

7. If any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description, the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872, lie upon such person. Burden of proof.

1 of 1872.

8. The Central Government may, by order, declare that any or all of the provisions of this Act or the orders made thereunder shall not apply, or shall apply only with such modifications or subject to such conditions as may be specified, to or in relation to any individual foreigner or any class or description of foreigner. Power to exempt from application of Act.

Power to give effect to orders, directions, etc.

9. (1) Any authority empowered by or under or in pursuance of the provisions of this Act to give any direction or to exercise any other power, may, in addition to any other action expressly provided for in this Act, take, or cause to be taken, such steps and use, or cause to be used, such force as may, in its opinion, be reasonably necessary for securing compliance with such direction or for preventing or rectifying any breach thereof, or for the effective exercise of such power, as the case may be.

(2) Any police officer may take such steps and use such force as may, in his opinion, be reasonably necessary for securing compliance with any order made or direction given under or in pursuance of the provisions of this Act or for preventing or rectifying any breach of such order or direction.

(3) The power conferred by this section shall be deemed to confer upon any person acting in exercise thereof a right of access to any land or other property whatsoever.

Power to delegate authority.

10. Any authority upon which any power to make or give any direction, consent or permission or to do any other act is conferred by this Act or by any order made thereunder may, unless express provision is made to the contrary, in writing authorise, conditionally or otherwise, any authority subordinate to it to exercise such power on its behalf, and thereupon the said subordinate authority shall, subject to such conditions as may be contained in the authorisation, be deemed to be the authority upon which such power is conferred by or under this Act.

Attempts, etc., to contravene the provisions of this Act, etc.

11. (1) Any person who attempts to contravene, or abets, or attempts to abet, or does any act preparatory to, a contravention of, the provisions of this Act or of any order made or direction given thereunder, or fails to comply with any direction given in pursuance of any such order, shall be deemed to have contravened the provisions of this Act.

(2) Any person who, knowing or having reasonable cause to believe that any other person has contravened the provisions of this Act or of any order made or direction given thereunder, gives that other person any assistance with intent thereby to prevent, hinder or otherwise interfere with his arrest, trial or punishment

for the said contravention, shall be deemed to have abetted that contravention.

(3) The master of any vessel or the pilot of any aircraft, as the case may be, by means of which any foreigner enters or leaves British India in contravention of any order made under, or direction given in pursuance of, section 3 shall, unless he proves that he exercised all due diligence to prevent the said contravention, be deemed to have contravened this Act.

12. If any person contravenes the provisions of this Act or of any order made thereunder, or any direction given in pursuance of this Act or such order, he shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine, and if such person has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting Court why such penalty should not be paid.

**Penalties.**

13. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

**Protection to persons acting under this Act.**

14. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Foreigners Act, 1864, the Registration of Foreigners Act, 1939, and of any other enactment for the time being in force.

**Application of other laws not barred.**

III of 1864.  
XVI of 1939.

I of 1939.

15. (1) The Foreigners Ordinance, 1939, is hereby repealed.

**Repeal and saving.**

(2) Notwithstanding such repeal, all orders made, directions given, things done and action taken under the said Ordinance, shall be deemed to have been made, given, done or taken under the provisions of this Act as if this Act had come into force on the 26th day of August, 1939, references to the said Ordinance in any rule made under any enactment shall be construed as references to this Act, and offences committed against or proceedings commenced under the said Ordinance may be punished or may be continued and completed as if such offences were committed against or such proceedings were commenced under this Act.



## THE ROYAL INDIAN NAVY (EXTENSION OF SERVICE) ACT, 1940.

ACT No. III OF 1940.<sup>1</sup>

*23rd February, 1940.]*

An Act to provide for the retention in service of certain persons enrolled for service in the Royal Indian Navy.

**W**HEREAS it is expedient to provide for the retention in service of certain persons enrolled for service in the Royal Indian Navy;

It is hereby enacted as follows:—

**Short title.**

1. This Act may be called the Royal Indian Navy (Extension of Service) Act, 1940.

**Extension of service where term of service has expired.**

2. (1) Until such date as may be notified by the Central Government as the date of termination of the present hostilities, any person enrolled for service in the Royal Indian Navy who, by reason of the expiry of the term for which he engaged to serve when so enrolled, is no longer liable for service shall, notwithstanding such expiry, continue to be enrolled for service and to be liable for service in the Royal Indian Navy until he is discharged by order of the Officer Commanding the Royal Indian Navy:

Provided that the period for which the service of any such person is extended under this section shall not exceed five years from the day on which his service would otherwise have terminated.

(2) The provisions of this section shall apply also to any person enrolled for service in the Royal Indian Navy if the expiry of the term for which he engaged to serve occurred between the 2nd day of September, 1939, and the commencement of this Act.

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<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1940, Pt. V, p. 83.

This Act has been applied to the Chittagong Hill Tracts, see Notification No. 3017-E.A., dated 11th March, 1940, Calcutta Gazette, dated 14th March, 1940.

# THE TRADE MARKS ACT, 1940.

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ACT No. V OF 1940.<sup>1</sup>

[11th March, 1940.]

An Act to provide for the registration and more effective protection of Trade Marks.

WHEREAS it is expedient to provide for the registration and more effective protection of trade marks;

It is hereby enacted as follows:—

## CHAPTER I.

## PRELIMINARY.

1. (1) This Act may be called the Trade Marks Act, 1940. Short title, extent and commencement.
- (2) It extends to the whole of British India.

(3) This section and section 85 shall come into force at once; the remaining provisions of the Act shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint in this behalf.

2. (1) In this Act, unless there is anything repugnant in the Definitions. subject or context,—

- (a) “associated trade marks” means trade marks deemed to be, or required to be registered as, associated trade marks under this Act;
- (b) “certification trade mark” means a mark adapted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic, from goods not so certified and registrable as such under the provisions of Chapter VIII in respect of those goods in the name, as proprietor of the certification trade mark, of that person;

<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1939, Part V, page 249; for the Report of the Select Committee, see *ibid.*, 1940, Part V, page 51.

This Act has been applied to British Baluchistan, see Notification No. 168-N., dated 17th October, 1940, Gazette of India, 1940, Part I, page 1478.

## (Chapter I.—Preliminary.)

- (c) "District Court" has the meaning assigned to it in the Code of Civil Procedure, 1908; V of 1908.
- (d) "High Court" means a High Court as defined in sub-section (1) of section 219 of the Government of India Act, 1935; 26 Geo. 5,  
ch. 2.
- (e) "limitations" (with its grammatical variations) means any limitations of the exclusive right to the use of a trade mark given by the registration of a person as proprietor thereof, including limitations of that right as to mode of use, as to use in relation to goods to be sold or otherwise traded in within British India, or as to use in relation to goods to be exported to any market outside British India;
- (f) "mark" includes a device, brand, heading, label, ticket, name, signature, word, letter or numeral or any combination thereof;
- (g) "permitted use" means the use of a trade mark by a registered user thereof in relation to goods with which he is connected in the course of trade and in respect of which for the time being the trade mark remains registered and he is registered as a registered user, being use such as to comply with any conditions or restrictions to which his registration is subject;
- (h) "prescribed" means prescribed by rules made, in relation to proceedings before a High Court, by such High Court, and in other cases, by the Central Government;
- (i) "registered" (with its grammatical variations) means registered under this Act;
- (j) "registered trade mark" means a trade mark which is actually on the register;
- (k) "registered user" means a person who is for the time being registered as such under section 41;
- (l) "trade mark" means a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right, either as proprietor or as registered user, to use the mark whether with or without any indication of the identity of that person;

(Chapter I.—Preliminary. Chapter II.—The Register and Conditions for Registration.)

(m) "transmission" means transmission by operation of law, devolution on the personal representative of a deceased person and any other mode of transfer, not being assignment;

(n) "tribunal" means the Registrar or, as the case may be, the Court before which the proceeding concerned is pending.

(2) References in this Act to the use of a mark shall be construed as references to the use of a printed or other visual representation of the mark, and references herein to the use of a mark in relation to goods shall be construed as references to the use thereof upon, or in any other relation whatsoever to, such goods.

3. The provisions of this Act shall be in addition to, and Application of other laws not barred. not in derogation of the provisions of any other law for the time being in force.

## CHAPTER II.

### THE REGISTER AND CONDITIONS FOR REGISTRATION.

4. (1) For the purposes of this Act there shall be established The register of trade marks. at the Patent Office a Trade Mark Registry, and a record called the Register of Trade Marks (in this Act referred to as the register) shall be kept thereat wherein shall be entered all registered trade marks with the names, addresses and descriptions of their proprietors, notifications of assignments and transmissions, the names, addresses and descriptions of registered users, disclaimers, conditions, limitations, and such other matters relating to registered trade marks as may be prescribed, but there shall not be entered in the register any notice of any trust express, implied or constructive, nor shall any such notice be receivable by the Registrar.

(2) Subject to the superintendence and direction of the Central Government, the register shall be kept under the control and management of the Controller of Patents and Designs, who shall for the purposes of this Act be called the Registrar of Trade Marks and is in this Act referred to as the Registrar.

(3) The register shall at all convenient times be open to the inspection of the public, subject to such conditions and restrictions as may be prescribed.

5. (1) A trade mark may be registered only in respect of Registration to be in respect of particular goods. particular goods or classes of goods.



*(Chapter II.—The Register and Conditions for  
Registration.)*

(2) Any question arising as to the class within which any goods fall shall be determined by the Registrar whose decision in the matter shall be final.

**Distinctiveness  
requisition for  
registration**

6. (1) A trade mark shall not be registered unless it contains or consists of at least one of the following essential particulars, namely:—

- (a) the name of a company, individual, or firm, represented in a special or particular manner;
- (b) the signature of the applicant for registration or some predecessor in his business;
- (c) one or more invented words;
- (d) one or more words having no direct reference to the character or quality of the goods, and not being, according to its ordinary signification, a geographical name or surname or the name of a sect, caste or tribe in India;
- (e) any other distinctive mark, provided that a name, signature, or any word, other than such as fall within the descriptions in the above clauses, shall not be registrable except upon evidence of its distinctiveness.

(2) For the purposes of this section, the expression “distinctive” means adapted, in relation to the goods in respect of which a trade mark is proposed to be registered, to distinguish goods with which the proprietor of the trade mark is or may be connected in the course of trade from goods in the case of which no such connection subsists, either generally or, where the trade mark is proposed to be registered subject to limitations, in relation to use within the extent of the registration.

(3) In determining whether a trade mark is adapted to distinguish as aforesaid, the tribunal may have regard to the extent to which—

- (a) the trade mark is inherently so adapted to distinguish, and
- (b) by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact so adapted to distinguish:

Provided that in the case of a trade mark which has been continuously used (either by the applicant for registration or by some predecessor in his business, and either in its original form or with additions or alterations not substantially affecting its identity) in relation to the same goods as those in relation to

*(Chapter II.—The Register and Conditions for  
Registration.)*

which registration is applied for, during a period from a date prior to the 25th day of February, 1937, to the date of application for registration, the Registrar shall not refuse registration by reason only of the fact that the trade mark is not adapted to distinguish as aforesaid, and may accept evidence of acquired distinctiveness as entitling the trade mark to registration.

7. (1) A trade mark may be limited wholly or in part to one or more specified colours, and any such limitation shall be taken into consideration by any tribunal having to decide on the distinctive character of the trade mark.

*Limitation as to colour.*

(2) So far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

8. No trade mark nor part of a trade mark shall be registered which consists of, or contains, any scandalous design, or any matter the use of which would—

*Prohibition of registration of certain matter.*

(a) by reason of its being likely to deceive or to cause confusion or otherwise, be disentitled to protection in a Court of justice; or

(b) be likely to hurt the religious susceptibilities of any class of His Majesty's subjects; or

(c) be contrary to any law for the time being in force or to morality.

9. No word which is the commonly used and accepted name of any single chemical element or single chemical compound (as distinguished from a mixture) shall be registered as a trade mark in respect of a chemical substance or preparation, and any such registration shall, notwithstanding anything in section 24, be deemed for the purposes of section 46 to be an entry made in the register without sufficient cause or an entry wrongly remaining on the register, as the circumstances may require:

*Use of names of chemical elements barred.*

Provided that this section shall not apply to a word which is used to denote only a brand or make of the element or compound as made by the proprietor or a registered user of the trade mark, as distinguished from the element or compound as made by others, and in association with a suitable name or description open to the public use.

10. (1) Save as provided in sub-section (2), no trade mark shall be registered in respect of any goods or description of goods which is identical with a trade mark belonging to a different proprietor and already on the register in respect of the same goods or description of goods, or which so nearly resembles such trade mark as to be likely to deceive or cause confusion.

*Prohibition of registration of identical or similar trade mark.*

(Chapter II.—*The Register and Conditions for Registration.*)

(2) In case of honest concurrent use or of other special circumstances which, in the opinion of the Registrar, make it proper so to do he may permit the registration by more than one proprietor of trade marks which are identical or nearly resemble each other in respect of the same goods or description of goods, subject to such conditions and limitations, if any, as the Registrar may think fit to impose.

(3) Where separate applications are made by different persons to be registered as proprietors respectively of trade marks which are identical or nearly resemble each other, in respect of the same goods or description of goods, the Registrar may refuse to register any of them until their rights have been determined by a competent Court.

Registration of parts of trade marks and of trade marks as a series.

11. (1) Where the proprietor of a trade mark claims to be entitled to the exclusive use of any part thereof separately, he may apply to register the whole and the part as separate trade marks.

(2) Each such separate trade mark shall satisfy all the conditions applying to, and have all the incidents of, an independent trade mark.

(3) Where a person claiming to be the proprietor of several trade marks in respect of the same goods or description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

- (a) statements of the goods in relation to which they are respectively used or proposed to be used; or
- (b) statements of number, price, quality, or names of places; or
- (c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or
- (d) colour;

seeks to register those trade marks, they may be registered as a series in one registration.

Associated trade marks.

12. (1) Where a trade mark which is registered, or is the subject of an application for registration, in respect of any goods is identical with another trade mark which is registered, or is the subject of an application for registration, in the name of the same proprietor in respect of the same goods or description of goods, or so nearly resembles it as to be likely to deceive or cause confusion if used by a person other than the proprietor, the Registrar may at any time require that the trade marks shall be entered on the register as associated trade marks.

(Chapter II.—The Register and Conditions for Registration. Chapter III.—Procedure for, and duration of, Registration.)

(2) Where a trade mark and any part thereof are, in accordance with the provisions of sub-section (1) of section 11, registered as separate trade marks in the name of the same proprietor, they shall be deemed to be, and shall be registered as, associated trade marks.

(3) All trade marks registered in accordance with the provisions of sub-section (3) of section 11 as a series in one registration shall be deemed to be, and shall be registered as, associated trade marks.

(4) On application made in the prescribed manner by the registered proprietor of two or more trade marks registered as associated trade marks, the Registrar may dissolve the association as respects any of them if he is satisfied that there would be no likelihood of deception or confusion being caused if that trade mark were used by any other person in relation to any of the goods in respect of which it is registered, and may amend the register accordingly.

13. If a trade mark contains—

(a) any part not separately registered as a trade mark in the name of the proprietor, or for the separate registration of which no application has been made, or

(b) any matter common to the trade, or otherwise of a non-distinctive character,

Registration  
subject to  
disclaimer.

the tribunal, in deciding whether the trade mark shall be entered or shall remain on the register, may require, as a condition of its being on the register, that the proprietor shall either disclaim any right to the exclusive use of such part or of all or any portion of such matter, as the case may be, to the exclusive use of which the tribunal holds him not to be entitled, or make such other disclaimer as the tribunal may consider necessary for the purpose of defining the rights of the proprietor under the registration:

Provided that no disclaimer shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

### CHAPTER III.

#### PROCEDURE FOR, AND DURATION OF, REGISTRATION.

14. (1) Any person claiming to be the proprietor of a trade mark used or proposed to be used by him who is desirous of

Application  
for registra-  
tion.

*(Chapter III.—Procedure for, and duration of,  
Registration.)*

registering it shall apply in writing to the Registrar in the prescribed manner, and subject to the provisions of this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments, modifications, conditions or limitations, if any, as he may think fit.

(2) In the case of a refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving thereat.

(3) The tribunal may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as it may think fit.

**Opposition to  
registration.**

15. (1) When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application as accepted, together with the conditions and limitations, if any, subject to which it has been accepted, to be advertised in the prescribed manner:

Provided that the Registrar may cause an application to be advertised before acceptance if it relates to a trade mark to which clause (e) of sub-section (1) of section 6 applies, or in any other case where it appears to him that it is expedient by reason of any exceptional circumstances so to do, and where an application has been so advertised the Registrar may, if he thinks fit, advertise it again when it has been accepted, but shall not be bound so to do.

(2) Any person may, within the prescribed time from the date of the advertisement of an application, give notice in writing in the prescribed manner to the Registrar of opposition to the registration.

(3) The Registrar shall serve in the prescribed manner a copy of the notice on the applicant, and within the prescribed time the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant sends such counter-statement, the Registrar shall serve in the prescribed manner a copy thereof on the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions or limitations, if any, registration is to be permitted.

(Chapter III.—*Procedure for, and duration of,  
Registration.*)

(5) If a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such notice, or an appellant against any order of the Registrar under section 14 or this section, neither resides nor carries on business in British India, the tribunal may require him to give security for costs of the proceedings before it, and in default of such security being duly given may treat the opposition or application or appeal, as the case may be, as abandoned.

16. (1) When an application for registration of a trade mark **Registration** has been accepted and either has not been opposed and the time for notice of opposition has expired, or having been opposed, has been decided in favour of the applicant, the Registrar shall, unless the application has been accepted in error, or unless the Central Government otherwise directs, register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the making of the said application, and that date shall, subject to any directions made under section 83 applicable to such trade mark, be deemed for the purposes of this Act to be the date of registration.

(2) On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration thereof sealed with the seal of the Patent Office.

(3) Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

17. (1) Save as provided in sub-section (2), nothing in this Act shall authorise the registration of two or more persons who use a trade mark independently, or propose so to use it, as joint proprietors thereof. **Jointly owned trade marks.**

(2) Where the relations between two or more persons interested in a trade mark are such that no one of them is entitled as between himself and the other or others of them to use it except—

- (a) on behalf of both or all of them, or
- (b) in relation to an article with which both or all of them are connected in the course of trade,

those persons may be registered as joint proprietors of the trade mark, and this Act shall have effect in relation to any rights to the use of the trade mark vested in those persons as if those rights had been vested in a single person.

(Chapter III.—Procedure for, and duration of, Registration. Chapter IV.—Effect of Registration.)

Duration and  
renewal of  
registration.

18. (1) The registration of a trade mark shall be for a period of seven years, but may be renewed from time to time in accordance with the provisions of this section.

(2) The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of the trade mark for a period of fifteen years from the date of expiration of the original registration or of the last renewal of registration, as the case may be (which date is in this section referred to as "the expiration of the last registration").

(3) At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained, and if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with the Registrar may remove the trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

Effect of  
removal  
from register  
for failure  
to pay fee  
for renewal.

19. Where a trade mark has been removed from the register for failure to pay the fee for renewal, it shall nevertheless, for the purpose of any application for the registration of another trade mark during one year next after the date of the removal, be deemed to be a trade mark already on the register, unless the tribunal is satisfied either—

- (a) that there has been no *bona fide* trade use of the trade mark which has been removed during the two years immediately preceding its removal; or
- (b) that no deception or confusion would be likely to arise from the use of the trade mark which is the subject of the application for registration by reason of any previous use of the trade mark which has been removed.

## CHAPTER IV.

### EFFECT OF REGISTRATION.

No action for  
infringement  
of unregistered  
trade mark.

20. (1) No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered trade mark unless such trade mark has been continuously in use since before the 25th day of February, 1937, by such person or by a predecessor in title of his and unless an application for its registration, made within five years from the commencement of this Act, has been refused; and the Registrar

*(Chapter IV.—Effect of Registration.)*

shall, on application in the prescribed manner, grant a certificate that such application has been refused.

(2) Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.

21. Subject to the provisions of sections 22, 25 and 26, the registration of a person in the register as proprietor of a trade mark in respect of any goods shall, if valid, give to that person the exclusive right to the use of the trade mark in relation to those goods and, without prejudice to the generality of the foregoing provision, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a registered user thereof using by way of the permitted use, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either—

Right  
conferred by  
registration.

(a) as being use as a trade mark; or

(b) to import a reference to some person having the right either as a proprietor or as registered user to use the trade mark or to goods with which such a person as aforesaid is connected in the course of trade.

22. (1) The right to the use of a trade mark given under section 21 by registration shall be subject to any conditions or limitations entered on the register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode, in relation to goods to be sold or otherwise traded in, in any place, or in relation to goods to be exported to any market, or in any other circumstances, to which, having regard to any such limitations the registration does not extend.

No  
infringement  
in certain  
circumstances.

(2) The said right to the use of a trade mark shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

(a) in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark if, as to those goods or a bulk of which they form part, the proprietor or the registered user conforming to the permitted use has applied the trade mark and has not subsequently removed or obliterated it, or has at any time expressly or impliedly consented to the use of the trade mark; or



*(Chapter IV.—Effect of Registration.)*

- (b) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the trade mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact a connection in the course of trade between any person and the goods.

(3) The use of a registered trade mark, being one of two or more registered trade marks which are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration as aforesaid, shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks.

Registration  
to be *prima*  
*facie* evidence  
of validity.

23. In all legal proceedings relating to a registered trade mark, the fact that a person is registered as proprietor thereof shall be *prima facie* evidence of the validity of the original registration of the trade mark and of all subsequent assignments and transmissions thereof.

Registration  
to be conclu-  
sive as to  
validity  
after seven  
years.

24. In all legal proceedings relating to a registered trade mark, the original registration of the trade mark shall after the expiration of seven years from the date of such original registration be taken to be valid in all respects unless such registration was obtained by fraud, or unless the trade mark offends against the provisions of section 8.

Saving for  
vested rights.

25. Nothing in this Act shall entitle the proprietor or a registered user of a registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it in relation to goods in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date prior—

- (a) to the use of the first-mentioned trade mark in relation to those goods by the proprietor or a predecessor in title of his, or
- (b) to the registration of the first-mentioned trade mark in respect of those goods in the name of the proprietor or a predecessor in title of his,

whichever is the earlier, or to object (on such use being proved) to registration of that identical or nearly resembling trade mark in respect of those goods under sub-section (2) of section 10.

## (Chapter IV.—Effect of Registration.)

26. No registration of a trade mark shall interfere with any *bona fide* use by a person of his own name or that of his place of business, or of the name, or of the name of the place of business, of any of his predecessors in business, or the use by any person of any *bona fide* description of the character or quality of his goods, not being a description that would be likely to be taken as importing any such reference as is mentioned in clause (b) of section 21 or in clause (b) of section 57.

Saving for use of name, address, or description of goods.

27. (1) The registration of a trade mark shall not be deemed to have become invalid by reason only of any use after the date of the registration of any words which the trade mark contains or of which it consists as the name or description of an article or substance:

Words used as name or description of an article or substance.

provided that, if it is proved either—

- (a) that there is a well-known and established use of the said words as the name or description of the article or substance by a person or persons carrying on a trade therein, not being use in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark or (in the case of a certification trade mark) goods certified by the proprietor; or
- (b) that the article or substance has been manufactured under a patent in force at or granted after the commencement of this section, that a period of two years or more after the cesser of the patent has elapsed, and that the said words are the only practicable name or description of the article or substance,—

the provisions of sub-section (2) shall apply.

(2) Where the facts mentioned in clause (a) or clause (b) of the proviso to sub-section (1) are proved with respect to any words, then—

(a) for the purposes of any proceedings under section 46—

- (i) if the trade mark consists solely of such words, the registration of the trade mark, so far as regards registration in respect of the article or substance in question or of any goods of the same description, shall be deemed to be an entry wrongly remaining on the register;

(ii) if the trade mark contains such words and other matter, the tribunal, in deciding whether the trade mark shall remain on the register, so far

(Chapter IV.—Effect of Registration. Chapter V.—  
Assignment and Transmission)

as regards registration in respect of the article or substance in question and of any goods of the same description, may, in case of a decision in favour of its remaining on the register, require as a condition thereof that the proprietor shall disclaim any right to the exclusive use in relation to that article or substance and any goods of the same description, of such words, provided that no disclaimer shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made;

- (b) for the purposes of any other legal proceedings relating to the trade mark,—
  - (i) if the trade mark consists solely of such words, all rights of the proprietor under this Act or any other law to the exclusive use of the trade mark in relation to the article or substance in question or to any goods of the same description; or
  - (ii) if the trade mark contains such words and other matter, all such rights of the proprietor to the exclusive use of such words, in such relation as aforesaid,

shall be deemed to have ceased on the date at which the use mentioned in clause (a) of the proviso to sub-section (1) first became well-known and established, or at the expiration of the period of two years mentioned in clause (b) of the said proviso.

## CHAPTER V.

### ASSIGNMENT AND TRANSMISSION.

Power of  
registered  
proprietor to  
assign and  
give receipts.

28. The person for the time being entered in the register as proprietor of a trade mark shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power to assign the trade mark, and to give effectual receipts for any consideration for such assignment.

Assignability  
of registered  
trade marks.

29. Notwithstanding anything in any other law to the contrary, a registered trade mark shall, subject to the provisions of this Chapter, be assignable and transmissible whether in connection with the goodwill of a business or not, and in respect either of all of the goods in respect of which it is registered or of some only of those goods.

*(Chapter V.—Assignment and Transmission.)*

30. An unregistered trade mark shall be assignable and transmissible whether in connection with the goodwill of a business or not: Assignability of unregistered trade marks.

Provided that, except in connection with the goodwill of a business, assignment or transmission shall be permissible only if—

- (a) at the time of assignment or transmission of the unregistered trade mark it is used in the same business as a registered trade mark, and
- (b) the registered trade mark is assigned or transmitted at the same time and to the same person as the unregistered trade mark, and
- (c) the unregistered trade mark relates to goods in respect of which the registered trade mark is assigned or transmitted.

31. (1) Notwithstanding anything in sections 29 and 30, a trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist, whether under this Act or any other law, exclusive rights in more than one of the persons concerned to the use, in relation to the same goods or description of goods, of trade marks nearly resembling each other or of identical trade marks, if, having regard to the similarity of the goods and of the trade marks, the use of the trade marks in exercise of those rights would be likely to deceive or cause confusion: Restrictions on assignment or transmission where multiple exclusive rights would be created.

Provided that an assignment or transmission shall not be deemed to be invalid under this sub-section if the exclusive rights subsisting as a result thereof in the persons concerned respectively are, having regard to limitations imposed thereon, such as not to be exercisable by two or more of those persons in relation to goods to be sold, or otherwise traded in, within British India (otherwise than for export therefrom), or in relation to goods to be exported to the same market outside British India.

(2) The proprietor of a registered trade mark who proposes to assign it may submit to the Registrar in the prescribed manner a statement of case setting out the circumstances and the Registrar may issue to him a certificate stating whether, having regard to the similarity of the goods and of the trade marks referred to in the case, the proposed assignment would or would not be invalid under sub-section (1), and a certificate so issued shall, subject to appeal and unless it is shown that the certificate was obtained by fraud or misrepresentation, be

## (Chapter V.—Assignment and Transmission.)

conclusive as to the validity or invalidity under sub-section (1) of the assignment in so far as such validity or invalidity depends upon the facts set out in the case, but, as regards a certificate in favour of validity, only if application for the registration under section 35 of the title of the person becoming entitled is made within six months from the date on which the certificate is issued.

Restrictions  
on assign-  
ment or  
transmission  
when exclu-  
sive rights  
would be  
created in  
different  
parts of  
British  
India.

32. Notwithstanding anything in sections 29 and 30, a trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist whether under this Act or any other law an exclusive right in one of the persons concerned to the use of the trade mark limited to use in relation to goods to be sold, or otherwise traded in, in any place in British India and an exclusive right in another of these persons to the use of a trade mark nearly resembling the first-mentioned trade mark or of an identical trade mark in relation to the same goods or description of goods limited to use in relation to goods to be sold, or otherwise traded in, in any other place in British India:

Provided that in any such case, on application in the prescribed manner by the proprietor of a trade mark who proposes to assign it, or by a person who claims that a registered trade mark has been transmitted to him or to a predecessor in title of his since the commencement of this Act, the Registrar, if he is satisfied that in all the circumstances the use of the trade mark in exercise of the said rights would not be contrary to the public interest, may approve the assignment or transmission, and an assignment or transmission so approved shall not, unless it is shown that the approval was obtained by fraud or misrepresentation, be deemed to be invalid under this section or section 31 if application for the registration under section 35 of the title of the person becoming entitled is made within six months from the date on which the approval is given or, in the case of a transmission, was made before that date.

Conditions  
for assign-  
ment other-  
wise than in  
connection  
with the  
goodwill of a  
business.

33. Where an assignment in respect of any goods of a trade mark which is at the time of the assignment used in a business in those goods, is made after the commencement of this Act otherwise than in connection with the goodwill of that business, the assignment shall not take effect unless the assignee, not later than the expiration of six months from the date on which the assignment is made or within such extended period, if any, as the Registrar may allow, applies to the Registrar for directions with respect to the advertisement of the assignment, and advertises it in such form and manner and within such period as the Registrar may direct

(Chapter V.—Assignment and Transmission. Chapter VI.—  
Use of Trade Marks and Registered Users.)

34. (1) A certification trade mark shall not be assignable or transmissible otherwise than with the consent of the Central Government, for which application shall be made in writing in the prescribed manner through the Registrar.

Conditions  
for assign-  
ment and  
transmission  
of certification  
trade marks  
and associated  
trade marks.

(2) Associated trade marks shall be assignable and transmissible only as a whole and not separately.

35. (1) Where a person becomes entitled by assignment or transmission to a registered trade mark, he shall apply in the prescribed manner to the Registrar to register his title, and the Registrar shall on receipt of the application and on proof of title to his satisfaction, register him as the proprietor of the trade mark in respect of the goods in respect of which the assignment or transmission has effect, and shall cause particulars of the assignment or transmission to be entered on the register.

Registration  
of assignments  
and trans-  
missions.

(2) Except for the purposes of an appeal against a decision of the Registrar under sub-section (1) or of an application under section 46, a document or instrument in respect of which no entry has been made in the register in accordance with sub-section (1) shall not be admitted in evidence before any tribunal in proof of the title to a trade mark unless the tribunal otherwise directs.

## CHAPTER VI.

### USE OF TRADE MARKS AND REGISTERED USERS.

36. (1) No application for the registration of a trade mark in respect of any goods shall be refused, nor shall permission for such registration be withheld, on the ground only that it appears that the applicant does not use or propose to use the trade mark, if the Registrar is satisfied that a company is about to be formed and registered under the Indian Companies Act, 1913, and that the applicant intends to assign the trade mark to that company with a view to the use thereof in relation to those goods by the company.

Proposed  
use of trade  
mark by  
company to  
be formed.

VII of 1913.

(2) The tribunal may, in a case to which sub-section (1) applies, require the applicant to give security for the costs of any proceedings relative to any opposition or appeal, and in default of such security being duly given may treat the application as abandoned.

(3) Where in a case to which sub-section (1) applies, a trade mark in respect of any goods is registered in the name of an applicant who relies on intention to assign to a company, then, unless within such period as may be prescribed, or within such further period not exceeding six months as the Registrar

(Chapter VI—Use of Trade Marks and Registered Users.)

may, on application being made to him in the prescribed manner, allow, the company has been registered as the proprietor of the trade mark in respect of those goods, the registration shall cease to have effect in respect thereof at the expiration of that period, and the Registrar shall amend the register accordingly.

Removal  
from register  
and imposition  
of limitations  
on ground of  
non-use.

37. (1) Subject to the provisions of section 38, a registered trade mark may be taken off the register in respect of any of the goods in respect of which it is registered on application in the prescribed manner by any person aggrieved to a High Court or to the Registrar, on the ground either—

- (a) that the trade mark was registered without any *bona fide* intention on the part of the applicant for registration that it should be used in relation to those goods by him or, in a case to which the provisions of section 36 apply, by the company concerned, and that there has in fact been no *bona fide* use of the trade mark in relation to those goods by any proprietor thereof for the time being up to a date one month before the date of the application; or
- (b) that up to a date one month before the date of the application, a continuous period of five years or longer elapsed during which the trade mark was registered and during which there was no *bona fide* use thereof in relation to those goods by any proprietor thereof for the time being:

Provided that, except where the applicant has been permitted under sub-section (2) of section 10 to register an identical or nearly resembling trade mark in respect of the goods in question or where the tribunal is of opinion that he might properly be permitted so to register such a trade mark, the tribunal may refuse an application made under clause (a) or clause (b) in relation to any goods, if it is shown that there has been, before the relevant date or during the relevant period, as the case may be, *bona fide* use of the trade mark by any proprietor thereof for the time being in relation to goods of the same description, being goods in respect of which the trade mark is registered.

(2) Where in relation to any goods in respect of which a trade mark is registered—

- (a) the circumstances referred to in clause (b) of sub-section (1) are shown to exist so far as regards non-use of the trade mark in relation to goods to be sold, or otherwise traded in, in a particular place in British India (otherwise than for export

*(Chapter VI.—Use of Trade Marks and Registered Users.)*

from British India), or in relation to goods to be exported to a particular market outside British India, and

- (b) a person has been permitted under sub-section (2) of section 10 to register an identical or nearly resembling trade mark in respect of those goods under a registration extending to use in relation to goods to be so sold, or otherwise traded in, or in relation to goods to be so exported, or the tribunal is of opinion that he might properly be permitted so to register such a trade mark,

on application by that person in the prescribed manner to a High Court or to the Registrar, the tribunal may impose on the registration of the first-mentioned trade mark such limitations as it thinks proper for securing that that registration shall cease to extend to such use.

(3) An applicant shall not be entitled to rely for the purpose of clause (b) of sub-section (1) or of sub-section (2) on any non-use of a trade mark which is shown to have been due to special circumstances in the trade and not to any intention to abandon or not to use the trade mark in relation to the goods to which the application relates.

38. (1) Where a trade mark consisting of any invented word has become so well-known as respects any goods in relation to which it is registered and has been used, that the use thereof in relation to other goods would be likely to be taken as indicating a connection in the course of trade between those goods and a person entitled to use the trade mark in relation to the first-mentioned goods, then, notwithstanding that the proprietor registered in respect of the first-mentioned goods does not use or propose to use the trade mark in relation to those other goods and notwithstanding anything in section 37, the trade mark may on application in the prescribed manner by such proprietor be registered in his name in respect of those other goods as a defensive trade mark and, while so registered, shall not be liable to be taken off the register in respect of those goods under the said section.

Defensive  
registration  
of well-known  
trade marks.

(2) The registered proprietor of a trade mark may apply for the registration thereof in respect of any goods as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods otherwise than as a defensive trade mark, or may apply for the registration thereof in respect of any goods otherwise than as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods as a defensive trade mark, in lieu in each case of the existing registration.



*(Chapter VI.—Use of Trade Marks and Registered Users.)*

(3) A trade mark registered as a defensive trade mark and that trade mark as otherwise registered in the name of the same proprietor shall, notwithstanding that the respective registrations are in respect of different goods, be deemed to be, and shall be registered as, associated trade marks.

(4) On application in the prescribed manner by any person aggrieved to a High Court or to the Registrar, the registration of a trade mark as a defensive trade mark may be cancelled on the ground that the requirements of sub-section (1) are no longer satisfied in respect of any goods in relation to which the trade mark is registered in the name of the same proprietor otherwise than as a defensive trade mark, or may be cancelled as respects any goods in relation to which it is registered as a defensive trade mark on the ground that there is no longer any likelihood that the use of the trade mark in relation to those goods would be taken as giving the indication mentioned in sub-section (1).

(5) The Registrar may at any time cancel the registration as a defensive trade mark of a trade mark of which there is no longer any registration in the name of the same proprietor otherwise than as a defensive trade mark.

(6) Except as otherwise expressly provided in this section, the provisions of this Act shall apply in respect of the registration of trade marks as defensive trade marks and of trade marks so registered as they apply in other cases.

Registered  
users.

39. (1) A person other than the proprietor of a trade mark may be registered as a registered user thereof in respect of all or any of the goods in respect of which it is registered (otherwise than as a defensive trade mark) and either with or without conditions or restrictions.

(2) The permitted use of a trade mark shall be deemed to be use by the proprietor thereof, and shall be deemed not to be use by a person other than the proprietor, for any purpose for which such use is material under this Act or any other law.

Power of  
registered  
user to take  
proceedings  
against  
infringement.

40. (1) Subject to any agreement subsisting between the parties, a registered user of a trade mark shall be entitled to call upon the proprietor thereof to take proceedings to prevent infringement thereof, and if the proprietor refuses or neglects to do so within three months after being so called upon, the registered user may institute proceedings for infringement in his own name as if he were the proprietor, making the proprietor a defendant.

(2) Notwithstanding anything contained in any other law, a proprietor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

*(Chapter VI.—Use of Trade Marks and Registered Users.)*

41. (1) Where it is proposed that a person should be registered as a registered user of a trade mark, the proprietor and the proposed registered user shall make application in writing to the Registrar in the prescribed manner accompanied by an affidavit made by the proprietor, or by some person authorised to the satisfaction of the Registrar to act on his behalf,—

Application  
for registra-  
tion as regis-  
tered user.

- (a) giving particulars of the relationship, existing or proposed, between the proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which their relationship will confer and whether it is a term of their relationship that the proposed registered user shall be the sole registered user or that there shall be any other restriction as to persons for whose registration as registered users application may be made;
- (b) stating the goods in respect of which registration is proposed;
- (c) stating any conditions or restrictions proposed with respect to the characteristics of the goods, to the mode or place of permitted use, or to any other matter,
- (d) stating whether the permitted use is to be for a period or without limit of period, and, if for a period, the duration thereof;

and by such further documents, information or evidence as may be required by the Registrar or as may be prescribed.

(2) When the requirements of sub-section (1) have been complied with, if the Registrar is satisfied that in all the circumstances the use of the trade mark in respect of the proposed goods or any of them by the proposed registered user subject to any conditions or restrictions which the Registrar may think proper, would not be contrary to the public interest, the Registrar may register, subject as aforesaid, the proposed registered user as a registered user in respect of the goods as to which he is so satisfied.

(3) The Registrar shall refuse an application under this section if it appears to him that the grant thereof would tend to facilitate trafficking in a trade mark.

(4) The Registrar shall, if so requested by an applicant, take steps for securing that information given for the purposes of an application under this section (other than matter entered in the register) is not disclosed to rivals in trade.

*(Chapter VI.—Use of Trade Marks and Registered Users.)*

(5) The Registrar shall issue notice in the prescribed manner—

- (a) of the registration of a person as a registered user, to any other registered user of the trade mark;
- (b) of an application under section 42, to the registered proprietor, and each registered user (not being the applicant) of the trade mark.

Power to Registrar to vary or cancel registration as registered user.

42. Without prejudice to the provisions of section 46, the registration of a person as a registered user—

- (a) may be varied by the Registrar as regards the goods in respect of which, or any conditions or restrictions subject to which, it has effect, on the application in writing in the prescribed manner of the registered proprietor of the trade mark;
- (b) may be cancelled by the Registrar on the application in writing in the prescribed manner of the registered proprietor or of the registered user or of any other registered user of the trade mark;
- (c) may be cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds, namely:—
  - (i) that the registered user has used the trade mark otherwise than by way of the permitted use, or in such a way as to cause or to be likely to cause, deception or confusion;
  - (ii) that the proprietor or the registered user misrepresented, or failed to disclose, some fact material to the application for the registration, or that the circumstances have materially changed since the date of the registration;
  - (iii) that the registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested;
- (d) may be cancelled by the Registrar in respect of any goods in relation to which the trade mark is no longer registered.

Registered user not to have right of assignment or transmission.

43. Nothing in this Act shall confer on a registered user of a trade mark any assignable or transmissible right to the use thereof.

Use of one of associated or substantially identical trade marks equivalent to use of another.

44. (1) Where under the provisions of this Act use of a registered trade mark is required to be proved for any purpose, the tribunal may, if and so far as it shall think right, accept use of a registered associated trade mark, or of the trade mark

(Chapter VI.—Use of Trade Marks and Registered Users. Chapter VII.—Rectification and Correction of the Register.)

with additions or alterations not substantially affecting its identity, as an equivalent for the use required to be proved.

(2) The use of the whole of a registered trade mark shall for the purposes of this Act be deemed to be also a use of any trade mark being a part thereof and registered in accordance with subsection (1) of section 11 in the name of the same proprietor.

45. (1) The application in British India of a trade mark to goods to be exported from British India, and any other act done in British India in relation to goods to be so exported which, if done in relation to goods to be sold or otherwise traded in within British India would constitute use of a trade mark therein, shall be deemed to constitute use of the trade mark in relation to those goods for any purpose for which such use is material under this Act or any other law.

Use of trade mark for export trade, and use when form of trade connection changes.

(2) The use of a registered trade mark in relation to goods between which and the person using the mark any form of connection in the course of trade subsists shall not be deemed to be likely to cause deception or confusion on the ground only that the mark has been or is used in relation to goods between which and the person using the mark or any predecessor in his business different form of connection in the course of trade subsisted or subsists.

## CHAPTER VII.

### RECTIFICATION AND CORRECTION OF THE REGISTER.

46. (1) On application in the prescribed manner by any person aggrieved to a High Court or to the Registrar, the tribunal may make such order as it may think fit for cancelling or varying the registration of a trade mark on the ground of any contravention of, or failure to observe a condition entered on the register in relation thereto.

Power to cancel or vary registration and to rectify the register.

(2) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to a High Court or to the Registrar, and the tribunal may make such order for making, expunging or varying the entry as it may think fit.

(3) The tribunal may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the register.

(4) A High Court or the Registrar, of its or his own motion, may, after giving notice in the prescribed manner to the parties

*(Chapter VII.—Rectification and Correction of the Register.)*

concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2).

(5) Any order of the Court rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

Correction of  
register.

47. (1) The Registrar may, on application made in the prescribed manner by the registered proprietor,—

- (a) correct any error in the name, address or description of the registered proprietor of a trade mark;
- (b) enter any change in the name, address or description of the person who is registered as proprietor of a trade mark;
- (c) cancel the entry of a trade mark on the register;
- (d) strike out any goods or classes of goods from those in respect of which a trade mark is registered;
- (e) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of the trade mark.

(2) The Registrar may, on application made in the prescribed manner by a registered user of a trade mark, correct any error, or enter any change, in the name, address or description of the registered user.

Alteration of  
registered  
trade mark.

48. (1) The registered proprietor of a trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter the trade mark in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit.

(2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.

(3) Where leave is granted under this section, the trade mark as altered shall be advertised in the prescribed manner, unless the application has already been advertised under sub-section (2).

Adaptation of  
entries in  
register to  
amended or  
substituted  
classification  
of goods.

49. (1) The Registrar shall not, in exercise of any power conferred on him under clause (a) of sub-section (2) of section 84, make any amendment of the register which would have the effect of adding any goods or classes of goods to those in respect of which a trade mark is registered (whether in one or more classes) immediately before the amendment is to be made or of

(Chapter VII.—Rectification and Correction of the  
Register. Chapter VIII.—Certification Trade  
Marks.)

antedating the registration of a trade mark in respect of any goods:

Provided that this sub-section shall not apply when the Registrar is satisfied that compliance therewith would involve undue complexity and that the addition or antedating, as the case may be, would not affect any substantial quantity of goods and would not substantially prejudice the rights of any person.

(2) A proposal so to amend the register shall be notified to the registered proprietor of the trade mark affected and advertised in the prescribed manner, and may be opposed before the Registrar by any person aggrieved on the ground that the proposed amendment contravenes the provisions of sub-section (1).

## CHAPTER VIII.

### CERTIFICATION TRADE MARKS.

50. Subject to the provisions of this Chapter, the other provisions of this Act except sections 6, 21, 22, 31, 32, 33, 36, 37, 38, 39, 40, 41, 42 and 43 and sub-section (2) of section 45 shall apply to certification trade marks as they apply to trade marks.

Provisions of this Act applicable to certification trade marks.

51. A mark shall not be registrable as a certification trade mark in the name of a person who carries on a trade in goods of the kind certified.

Certification trade mark not to be registered in name of person trading in goods certified thereby.

52. In determining whether a mark is adapted to distinguish in accordance with the provisions of clause (b) of sub-section (1) of section 2, the tribunal may have regard to the extent to which—

Determination whether a mark is a certification trade mark.

(a) the mark is inherently so adapted to distinguish in relation to the goods in question; and

(b) by reason of the use of the mark or of any other circumstances, the mark is in fact so adapted to distinguish in relation to the goods in question.

53. (1) An application for the registration of a mark as a certification trade mark shall be made to the Registrar in writing in the prescribed manner by the person proposed to be registered as the proprietor thereof, and accompanied by a draft of the regulations to be deposited under section 56.

Application or registration.

(2) The provisions of section 14 shall have effect in relation to an application under this section as they have effect in relation to an application under the said section, except that for references therein to acceptance of an application there shall be substituted references to authorisation to proceed with the application.

*(Chapter VIII.—Certification Trade Marks.)*

(3) In dealing under the said provisions with an application under this section, the tribunal shall have regard to the like considerations, so far as relevant, as if the application were an application under section 14 and to any other considerations (not being matters within the competence of the Central Government under section 54) relevant to applications under this section, including the desirability of securing that a certification trade-mark shall comprise some indication that it is a certification trade mark.

Consideration  
of application  
for registra-  
tion by  
Central  
Government.

54. When authorisation to proceed with an application under section 53 has been given, the Registrar shall forward the application to the Central Government who shall consider the application with regard to the following matters, namely:—

- (a) whether the applicant is competent to certify the goods in respect of which the mark is to be registered;
- (b) whether the draft of the regulations to be deposited under section 56 is satisfactory;
- (c) whether in all the circumstances the registration applied for would be to the public advantage;

and may either—

- (i) direct that the application shall not be accepted; or
- (ii) direct the Registrar to accept the application and approve the said draft of the regulations either without modification and unconditionally or subject to any conditions or limitations, or to any amendments or modification of the application or of the regulations, which it thinks requisite having regard to any of the said matters;

but, except in the case of a direction for acceptance and approval without modification and unconditionally, the Central Government shall not decide the matter without giving to the applicant an opportunity of being heard:

Provided that the Central Government may, at the request of the applicant made with the concurrence of the Registrar, consider the application with regard to any of the said matters before authorisation to proceed with the application has been given, so however that the Central Government shall be at liberty to reconsider any matter on which it has given a decision under this proviso if any amendment or modification is thereafter made in the application or in the draft of the regulations.

Opposition to  
registration.

55. (1) When an application has been accepted, the Registrar shall, as soon as may be thereafter, cause the application as accepted to be advertised in the prescribed manner, and the

*(Chapter VIII.—Certification Trade Marks.)*

provisions of section 15 shall have effect in relation to the registration of the mark as if the application had been an application under section 14:

Provided that, in deciding under the said provisions the tribunal shall have regard only to the considerations referred to in sub-section (3) of section 53, and a decision under the said provisions in favour of the applicant shall be conditional on the determination in his favour by the Central Government under sub-section (2) of this section of any opposition relating to any of the matters referred to in section 54.

(2) When notice of opposition is given relating to any of the matters referred to in section 54, the Central Government shall, after hearing the parties, if so required, and considering any evidence, decide whether, and subject to what conditions or limitations, or amendments or modifications, if any, of the application or of the regulations to be deposited under section 56, registration is, having regard to those matters, to be permitted.

56. (1) There shall be deposited at the Patent Office in respect of every mark registered as a certification trade mark regulations approved by the Central Government for governing the use thereof, which shall include provisions as to the cases in which the proprietor is to certify goods and to authorise the use of the certification trade mark, and may contain any other provisions which the Central Government may by general or special order require or permit to be inserted therein (including provisions conferring a right of appeal to the Registrar against any refusal of the proprietor to certify goods or to authorise the use of the certification trade mark in accordance with the regulations); and regulations so deposited shall be open to inspection in like manner as the register.

Deposit of regulations governing the use of a certification trade mark.

(2) The regulations so deposited may on the application of the registered proprietor be altered by the Registrar with the consent of the Central Government.

(3) The Central Government may cause such application to be advertised in any case where it appears to it expedient so to do, and where it does so, if within the time specified in the advertisement any person gives notice of opposition to the application, the Central Government shall not decide the matter without giving the parties an opportunity of being heard.

57. Subject to the provisions of sections 25, 26 and 58, the registration of a person as proprietor of a certification trade mark in respect of any goods shall, if valid, give to that person the exclusive right to the use of the certification trade mark in relation to those goods, and, without prejudice to the generality of the foregoing provision, that right shall be deemed to be infringed by any person who, not being the proprietor of the mark or a person authorised by him in that behalf under the regulations

Right conferred by registration.



*(Chapter VIII.—Certification Trade Marks.)*

deposited under section 56, using it in accordance therewith, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either—

- (a) as being use as a certification trade mark; or
- (b) to import a reference to some person having the right either as proprietor, or by his authorisation under the said regulations, to use the mark, or to goods certified by the proprietor.

No infringement in certain circumstances.

58. (1) The right to the use of a certification trade mark given under section 57 by registration shall be subject to any conditions or limitations entered on the register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode, in relation to goods to be sold or otherwise traded in in any place, in relation to goods to be exported to any market, or in any other circumstances, to which having regard to any such limitations, the registration does not extend.

(2) The said right to the use of a certification trade mark shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

- (a) in relation to goods certified by the proprietor of the mark if, as to those goods or a bulk of which they form part, the proprietor or another in accordance with his authorisation under the relevant regulations has applied the mark and has not subsequently removed or obliterated it, or the proprietor has at any time expressly or impliedly consented to the use of the mark, or
- (b) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact that the goods are certified by the proprietor:

Provided that clause (a) shall not apply to the case of use consisting of the application of any such mark as aforesaid to any goods, notwithstanding that they are such goods as are mentioned in that clause if such application is contrary to the said regulations.

(3) Where a certification trade mark is one of two or more registered certification trade marks which are identical or nearly resemble each other, the use of any of those marks in exercise

(Chapter VIII.—*Certification Trade Marks.* Chapter IX.—*Special Provisions for Textile Goods.*)

of the right to the use of that mark given by registration, shall not be deemed to be an infringement of the right so given to the use of any other of those marks.

59. (1) The Central Government may, on the application in the prescribed manner of any person aggrieved or on the recommendation of the Registrar, and after giving the proprietor an opportunity of opposing the application or recommendation, make such order as it thinks fit for expunging or varying any entry in the register relating to a certification trade mark, or for varying the deposited regulations, on any of the following grounds, namely:—

- (a) that the proprietor is no longer competent, in the case of any of the goods in respect of which the mark is registered, to certify those goods;
- (b) that the proprietor has failed to observe any provision of the deposited regulations to be observed on his part;
- (c) that it is no longer to the public advantage that the mark should be registered;
- (d) that it is requisite for the public advantage that, if the mark remains registered, the regulations should be varied;

Can  
or varying  
of registra-  
tion.

and neither a High Court nor the Registrar shall have any jurisdiction to make an order under section 46 on any of those grounds.

(2) The Registrar shall rectify the register and the deposited regulations in such manner as may be requisite for giving effect to an order made under sub-section (1).

60. The Registrar shall have no power to award costs to or against any party on an appeal to him against a refusal of the proprietor of a certification trade mark to certify goods or to authorise the use of the mark.

Costs not to  
be awarded  
in certain  
cases.

61. Save as otherwise expressly provided in this Chapter, every decision of the Central Government under this Chapter shall be final.

Decisions of  
Central  
Government  
to be final

## CHAPTER IX.

### SPECIAL PROVISIONS FOR TEXTILE GOODS.

62. The Central Government shall prescribe classes of goods (in this Chapter referred to as textile goods) to the trade marks used in relation to which the provisions of this Chapter shall apply; and subject to the said provisions, the other provisions of this Act shall apply to such trade marks as they apply to trade marks used in relation to other classes of goods.

Textile goods.

*(Chapter IX.—Special Provisions for Textile Goods.)*

Branch of  
Trade Marks  
Registry at  
Bombay  
and Textile  
Marks  
Record.

63. (1) There shall be established at Bombay, for the purpose of facilitating the registration of trade marks in respect of textile goods, a branch of the Trade Marks Registry. The officer in charge of the branch shall be called the Deputy Registrar.

(2) There shall be kept at the said branch for the purposes of this Act a record called the Textile Marks Record wherein shall be entered copies of all entries in the register relating to trade marks registered in respect of textile goods and the said record shall at all convenient times be open to the inspection of the public subject to such conditions and restrictions as may be prescribed.

(3) Trade marks in respect of textile goods of which registration has been refused shall be entered in a list called the Refused Textile Marks List, a copy of which shall be kept at the said branch, and the list and the said copy shall at all convenient times be open to the inspection of the public, subject to such conditions and restrictions as may be prescribed.

Restrictions  
on registra-  
tion of Piece  
goods.

64. In respect of textile goods being piece goods—

- (a) no mark consisting of a line heading alone shall be registrable as a trade mark;
- (b) a line heading shall not be deemed to be adapted to distinguish;
- (c) the registration of a trade mark shall not give any exclusive right to the use of a line heading;
- (d) the registration of letters or numerals, or any combination thereof, shall be subject to such conditions and restrictions as may be prescribed.

Registration.

65. (1) Applications for the registration of a trade mark in respect of textile goods may be made either to the Registrar or the Deputy Registrar at the option of the applicant.

(2) In respect of all trade marks, applications for registration of which are duly made to the Deputy Registrar under this chapter, the Deputy Registrar shall exercise all the powers of the Registrar under this Act but shall be subject to the general superintendence of the Registrar.

Advisory  
Committees.

66. (1) The Central Government may in the prescribed manner constitute one or more Advisory Committees of persons versed in the usages of the textile trade for the purpose of this section.

(2) The Registrar or the Deputy Registrar shall consult any such Committee with respect to any circumstances peculiar to the textile trade arising on an application to register a trade mark in respect of textile goods.

(3) The place of meeting and the conduct of business of such Committees shall be determined by rules made under this Act.

(Chapter X—Offences and Restraint of Use of Royal Arms and State Emblems.)

## CHAPTER X

### OFFENCES AND RESTRAINT OF USE OF ROYAL ARMS AND STATE EMBLEMS.

67. If any person makes, or causes to be made a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or produces or tenders, or causes to be produced or tendered, in evidence any such writing, knowing the entry or writing to be false, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Penalty for falsification of entries in register.

68. (1) From such date, not being earlier than one year from the commencement of this Act, as the Central Government may, by notification in the official Gazette, appoint in this behalf, no person shall make any representation—

Penalty for falsely representing a trade mark as registered.

- (a) with respect to a mark not being a registered trade mark, to the effect that it is a registered trade mark; or
- (b) with respect to a part of a registered trade mark not being a part separately registered as a trade mark, to the effect that it is separately registered as a trade mark; or
- (c) to the effect that a registered trade mark is registered in respect of any goods in respect of which it is not in fact registered; or
- (d) to the effect that the registration of a trade mark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitations entered on the register, the registration does not in fact give that right.

(2) If any person contravenes any of the provisions of subsection (1), he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(3) For the purposes of this section, the use in British India in relation to a trade mark of the word “registered”, or of any other expression referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the register, except—

- (a) where that word or other expression is used in direct association with other words delineated in characters at least as large as those in which that word or other expression is delineated and indicating that the reference is to registration as a trade mark under the law of a country outside British India, being a country under the law of which the registration referred to is in fact in force; or

(Chapter X.—Offences and Restraint of Use of Royal Arms and State Emblems. Chapter XI.—Miscellaneous.)

- (b) where that other expression is of itself such as to indicate that the reference is to such registration as is mentioned in clause (a); or
- (c) where that word is used in relation to a mark registered as a trade mark under the law of a country outside British India and in relation solely to goods to be exported to that country.

Restraint  
of use of  
Royal Arms  
and State  
emblems.

69. If a person, without due authority, uses in connection with any trade, business, calling or profession—

- (a) the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or
- (b) any device, emblem or title in such manner as to be calculated to lead to the belief that he is employed by, or supplies goods to, or is connected with, His Majesty's Government or the Central Government or any Provincial Government or any department of any such Government,

he may, at the suit of any person who is authorised to use such Arms or such device, emblem or title or of the Registrar, be restrained by injunction from continuing so to use the same.

## CHAPTER XI.

### MISCELLANEOUS.

Procedure  
before the  
Registrar.

70. In all proceedings under this Act before the Registrar—

- (a) the Registrar shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witnesses;
- (b) evidence shall be given by affidavit, provided that the Registrar may, if he thinks fit, take oral evidence in lieu of, or in addition to, such evidence by affidavit;
- (c) the Registrar shall not exercise any power vested in him by this Act or the rules made thereunder adversely to any party duly appearing before him without (if required in writing within the prescribed time so to do) giving such party an opportunity of being heard;
- (d) the Registrar may, save as otherwise expressly provided in this Act, and subject to any rules made in this behalf under section 84, make such orders as

## (Chapter XI.—Miscellaneous.)

to costs as he considers reasonable, and any such order shall be executable as a decree of a Civil Court.

71. In all proceedings under this Act before the Central Government, evidence shall be given by affidavit, provided that the Central Government may, if it thinks fit, take oral evidence in lieu of, or in addition to, such evidence by affidavit, and shall for that purpose have all the powers of a Civil Court referred to in clause (a) of section 70.

Procedure  
before  
Central  
Government

72. Where under this Act an applicant has the option of making an application either to a High Court or to the Registrar,—

Procedure in  
certain cases  
of option to  
apply to a  
High Court  
or the  
Registrar

(a) if any suit or other proceedings concerning the trade mark in question is pending before a High Court or a District Court, the application shall be made to that High Court or, as the case may be, to the High Court within whose jurisdiction that District Court is situated;

(b) if in any other case the application is made to the Registrar, the Registrar may, if he thinks fit, refer the application at any stage of the proceedings to a High Court.

73. No suit for the infringement of a trade mark or otherwise relating to any right in a trade mark shall be instituted in any Court inferior to a District Court having jurisdiction to try the suit.

Suits for  
infringement  
to be instituted  
before  
District  
Court.

74. (1) In any suit or other legal proceeding in which the relief sought includes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the tribunal.

Appearance  
of Registrar  
in proceedings  
involving  
rectification  
of register.

(2) Unless the tribunal otherwise directs, the Registrar may, in lieu of appearing, submit a statement in writing signed by him, giving such particulars as he thinks proper of the proceedings before him relating to the matter in issue, or of the grounds of any decision given by him affecting it, or of the practice of the Patent Office in like cases, or of other matters relevant to the issues and within his knowledge as Registrar, and such statement shall be evidence in the suit or other proceeding.

(3) The costs of the Registrar shall be in the discretion of the tribunal, but the Registrar shall not be ordered to pay the costs of any of the parties.

75. (1) A printed or written copy of any entry in the register, purporting to be certified by the Registrar and sealed with the seal of the Patent Office, shall be admitted in evidence in all Courts in British India and in all proceedings without further proof of production of the original.

Evidence of  
entries in  
register  
and things  
done by  
Registrar

(2) A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that he is authorised

## (Chapter XI.—Miscellaneous.)

by this Act or the rules to make or do shall be *prima facie* evidence of the entry having been made, and of the contents thereof, or of the matter or thing having been done or not done.

## Appeals

76. (1) Save as otherwise expressly provided in this Act, an appeal shall lie, within the period prescribed by the Central Government, from any decision of the Registrar or Deputy Registrar under this Act or the rules made thereunder to the High Court having jurisdiction:

Provided that if any suit or other proceeding concerning the trade mark in question is pending before a High Court or a District Court, the appeal shall be made to that High Court or, as the case may be, to the High Court within whose jurisdiction that District Court is situated.

(2) In an appeal by an applicant for registration against a decision of the Registrar under section 13 or section 14 or section 15, it shall not be open, save with the express permission of the Court, to the Registrar or any party opposing the appeal to advance grounds other than those recorded in the said decision or advanced by the party in the proceedings before the Registrar, as the case may be; and where any such additional grounds are advanced, the applicant for registration may, on giving notice in the prescribed manner, withdraw his application without being liable to pay the costs of the Registrar or the parties opposing his application

(3) Subject to the provisions of this Act and of rules made thereunder, the provisions of the Code of Civil Procedure, 1908, V of 1908 shall apply to appeals before a High Court under this Act.

lower to  
High Courts  
to make  
rules.

77. A High Court may make rules consistent with this Act as to the conduct and procedure of all proceedings under this Act before it.

Certificate of  
validity.

78. If in any legal proceeding in which the validity of the registration of a trade mark comes into question, a decision is given in favour of the proprietor of the trade mark, the tribunal may grant a certificate to that effect, and if such a certificate is granted, then in any subsequent legal proceeding in which the said validity comes into question, the said proprietor on obtaining a final order or judgment in his favour shall, unless the said final order or judgment for sufficient reason directs otherwise, be entitled to his full costs, charges and expenses as between legal practitioner and client.

Trade usage,  
etc., to be  
taken into  
consideration.

79. In any suit or other proceeding relating to a trade mark, the tribunal shall admit evidence of the usages of the trade concerned and of any relevant trade mark or get up legitimately used by other persons.

Agents.

80. Where by or under this Act any act, other than the making of an affidavit, is required to be done by any person, the act may, subject to prescribed conditions or in special cases with the consent of the Central Government, be done, in lieu

## (Chapter XI.—Miscellaneous.)

of by that person himself, by a duly authorised agent, being either a legal practitioner or a person registered in the prescribed manner as a trade marks agent.

81. There shall be paid in respect of applications and registra- Fees.  
tion and other matters under this Act such fees as may be  
prescribed by the Central Government.

82. The provisions of this Act shall be binding on the Crown. Crown to be bound.

83. If at any time after the expiry of six months from the commencement of this section it is made to appear to the Central Government that any Government outside British India has made satisfactory provision for the protection within its territories of trade marks in respect of which an application for registration has been made in British India, the Central Government may, by notification in the official Gazette, make provision with regard to trade marks in respect of which an application for registration has been made within the territories of that Government to enable any person who has applied within such territories for registration of a trade mark or his legal representative or assignee to obtain registration of the trade mark in British India under this Act on his making an application for registration in British India within such period as may be fixed in this behalf by the notification as if an application for registration under this Act had been made in respect of that trade mark at the date at which the application for registration was made within the territories of that Government.

84. (1) The Central Government may, subject to the condi- Power of  
tion of previous publication by notification in the official Gazette, Central Government  
make rules to carry out the purposes of this Act. to make  
rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe the classification of goods for the purpose of the registration of trade marks, and empower the Registrar to amend the register so far as may be necessary for the purpose of adapting the entries therein to any amended or substituted classification which may be prescribed;
- (b) require the making of duplicates of trade marks and other documents connected therewith;
- (c) provide for securing and regulating the publication, sale or distribution of copies of trade marks and other documents connected therewith;
- (d) prescribe additional matters to be entered in the register;
- (e) prescribe the conditions and restrictions subject to which the register, the Textile Marks Record and the Refused Textile Marks List may be inspected;



## (Chapter VI.—Miscellaneous.)

- (f) prescribe the form of certificates of registration;
- (g) prescribe the conditions under which a trade mark removed from the register may be restored under sub-section (3) of section 18;
- (h) prescribe the further documents, information or evidence to accompany an application under sub-section (1) of section 41;
- (i) prescribe classes of goods as textile goods for the purposes of Chapter IX;
- (j) provide for the constitution of Advisory Committees referred to in section 66, and prescribe the places of meeting, and conduct of business at meetings, of such Committees;
- (k) regulate the awarding of costs by the Registrar under section 70;
- (l) prescribe the conditions subject to which an agent referred to in section 80 may act;
- (m) prescribe the fees to be paid under this Act;
- (n) provide for the establishment of branches of the trade Marks Registry when expedient for facilitating the working of this Act, and authorise the preparation of copies of the register to be kept at such branch offices;
- (o) prescribe the manner in which, in proceedings under this Act before the Central Government or the Registrar, applications shall be made, notices given and matters advertised;
- (p) prescribe times or periods required by this Act to be prescribed;
- (q) provide, generally, for regulating the business of the Trade Marks Registry and of branches established under clause (n) or under section 63, and for regulating all things by this Act placed under the direction or control of the Central Government or the Registrar.

Power to Central Government to make provision for applications for registration before the coming into force of the remaining provisions of Act.

**85.** The Central Government may, by notification in the official Gazette, provide such procedure as it considers expedient to enable intending applicants to deposit trade marks at the Patent Office before the coming into force of the remaining provisions of this Act:

Provided that the deposit of a trade mark under this section shall not affect any right, existing or accruing, in the trade mark.

THE RESERVE BANK OF INDIA  
(CLOSING OF ANNUAL ACCOUNTS)  
ACT, 1940.

ACT No. VII OF 1940.<sup>1</sup>

[11th March, 1940.]

An Act to facilitate the changing of the date on which the annual accounts of the Reserve Bank of India are closed.

**W**HEREAS it is expedient that certain provisions should be made to facilitate the changing of the date on which the annual accounts of the Reserve Bank of India are closed;

It is hereby enacted as follows:—

1. (1) This Act may be called the Reserve Bank of India (Closing of Annual Accounts) Act, 1940. Short title and extent.

(2) It extends to the whole of British India.

2. In this Act “the Bank” means the Reserve Bank of India constituted by the Reserve Bank of India Act, 1934. Definition.

II of 1934.

3. Notwithstanding anything to the contrary contained in the Reserve Bank of India Act, 1934, or the regulations made under section 58 thereof the Power to close accounts, at expiry of period of six months.

II of 1934

<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1940, Pt. V, p. 96.

This Act has been applied to—

British Baluchistan, see Notification No. 168-N., dated 17th October, 1940. Gazette of India, 1940, Pt. I, p. 1478;

the partially excluded areas in the province of Madras, see Fort St. George Gazette, Notification No. 13, dated 20th January, 1941;

all the partially excluded areas of the province of Orissa, by Orissa Government Notification No. 337-F., dated 28th January, 1941;

the Darjeeling district and the partially excluded areas of the Mymensingh district with effect from 5th December, 1940, by Bengal Government Notification No. 3864-Com., dated 2nd December, 1940.

the Chittagong hill tracts with effect from the 16th January, 1941, by Bengal Government Notification No. 371, dated the 11th January, 1941.

Bank may, for the purpose of facilitating the changing of the date on which the annual accounts of the Bank are closed, close its accounts as at the close of business on the 30th day of June, 1940, and convene a general meeting (which shall be an annual general meeting within the meaning of the said Act) at a place where there is an office of the Bank within six weeks from the date on which the accounts are closed:

Provided that this general meeting shall not be held at the same place as that at which the immediately preceding annual general meeting was held.

Application of  
Act II of 1934  
when accounts  
are closed  
under section  
3.

4. References in sub-section (2) of section 14, section 52 and sub-sections (2) and (3) of section 53 of the Reserve Bank of India Act, 1934, to annual accounts, annual balance-sheet, the auditors' report upon the annual balance-sheet, and accounts and the report of the Central Board on the working of the Bank throughout the year, shall be deemed to include references to the accounts, balance-sheet, auditors' report and the report of the Central Board in respect of a period of six months ending on the 30th day of June, 1940.

Interpretation  
of section 47,  
Act II of 1934.

5. For the purposes of section 47 of the Reserve Bank of India Act, 1934, the net profits of the Bank for the period of six months ending on the 30th day of June, 1940, shall be deemed to be "net annual profits" but the cumulative dividend referred to in that section as payable out of such profits shall be payable at the rate of one and three quarter per cent.

Power to  
make regula-  
tions.

6. The Central Board of Directors of the Bank may, with the previous sanction of the Central Government, make regulations to provide for any matter for which provision is necessary or convenient in connection with the changing of the date on which the annual accounts of the Bank are closed, and in particular and without prejudice to the generality of the foregoing power for the manner in which the amount, if any, of the additional dividend referred to in section 47 of the Reserve Bank of India Act, 1934, shall be calculated in respect of the period of six months ending on the 30th day of June, 1940.

**THE ARBITRATION ACT, 1940.**

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ACT No. X OF 1940<sup>1</sup>

[11th March, 1940.]

An Act to consolidate and amend the law relating to Arbitration.

**W**HEREAS it is expedient to consolidate and amend the law relating to arbitration in British India;

It is hereby enacted as follows:—

## CHAPTER I.

## INTRODUCTORY.

Short title,  
extent and  
commence-  
ment.

1. (1) This Act may be called the Arbitration Act, 1940.

(2) it extends to the whole of British India.

(3) It shall come into force on the 1st day of July, 1940.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “arbitration agreement” means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not;

(b) “award” means an arbitration award;

(c) “Court” means a Civil Court having jurisdiction to decide the questions forming the subject matter of the reference if the same had been the subject-matter of a suit, but does not, except for the purpose of arbitration proceedings under section 21, include a Small Cause Court;

<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1939, Pt. V, p. 142; for the Report of the Select Committee, see *ibid.*, 1940, Pt. V, p. 35.

This Act has been applied to—

British Baluchistan, see Notification No. 168-N., dated 17th October, 1940, Gazette of India, 1940, Pt. I, p. 1478;

the whole of Chota Nagpur Division (excluding certain areas) except s. 1 (3), by Bihar Government Notification No. 1086—A-15/40-J.R., dated 31st August, 1940.

the Darjeeling district and the partially excluded areas of the Mymensingh District, subject to certain modifications, by Bengal Government Notification No. 240-J., dated the 22nd January, 1941.

(Chapter I.—Introductory: Chapter II.—Arbitration without Intervention of a Court.)

- (d) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;
- (e) "reference" means a reference to arbitration.

## CHAPTER II.

### ARBITRATION WITHOUT INTERVENTION OF A COURT.

3. An arbitration agreement, unless a different intention is expressed therein, shall be deemed to include the provisions set out in the First Schedule in so far as they are applicable to the reference.

Provisions implied in arbitration agreement.

4. The parties to an arbitration agreement may agree that any reference thereunder shall be to an arbitrator or arbitrators to be appointed by a person designated in the agreement either by name or as the holder for the time being of any office or appointment.

Agreement that arbitrators be appointed by third party.

5. The authority of an appointed arbitrator or umpire shall not be revocable except with the leave of the Court, unless a contrary intention is expressed in the arbitration agreement.

Authority of appointed arbitrator or umpire irrevocable except by leave of Court.

6. (1) An arbitration agreement shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such event be enforceable by or against the legal representative of the deceased.

Arbitration agreement not to be discharged by death of party thereto.

(2) The authority of an arbitrator shall not be revoked by the death of any party by whom he was appointed.

(3) Nothing in this section shall affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

7. (1) Where it is provided by a term in a contract to which an insolvent is a party that any differences arising thereout or in connection therewith shall be referred to arbitration, the said term shall, if the receiver adopts the contract, be enforceable by or against him so far as it relates to any such differences.

Provisions in case of insolvency.



(Chapter II.—Arbitration without Intervention of a Court.)

(2) Where a person who has been adjudged an insolvent had, before the commencement of the insolvency proceedings, become a party to an arbitration agreement, and any matter to which the agreement applies is required to be determined in connection with, or for the purposes of, the insolvency proceedings, then, if the case is one to which sub-section (1) does not apply, any other party to the agreement or the receiver may apply to the Court having jurisdiction in the insolvency proceedings for an order directing that the matter in question shall be referred to arbitration in accordance with the agreement, and the Court may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

(3) In this section the expression "receiver" includes an Official Assignee.

8. (1) In any of the following cases—

- (a) where an arbitration agreement provides that the reference shall be to one or more arbitrators to be appointed by consent of the parties, and all the parties do not, after differences have arisen, concur in the appointment or appointments; or
- (b) if any appointed arbitrator or umpire neglects or refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied, and the parties or the arbitrators, as the case may be, do not supply the vacancy; or
- (c) where the parties or the arbitrators are required to appoint an umpire and do not appoint him;

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to concur in the appointment or appointments or in supplying the vacancy.

(2) If the appointment is not made within fifteen clear days after the service of the said notice, the Court may, on the application of the party who gave the notice and after giving the other parties an opportunity of being heard, appoint an arbitrator or arbitrators or umpire, as the case may be, who shall have

Power of  
Court to  
appoint  
arbitrator or  
umpire.

*(Chapter II.—Arbitration without Intervention of a Court.)*

like power to act in the reference and to make an award as if he or they had been appointed by consent of all parties.

9. Where an arbitration agreement provides that a reference shall be to two arbitrators, one to be appointed by each party, then, unless a different intention is expressed in the agreement,—

Power to party to appoint new arbitrator or, in certain cases, a sole arbitrator.

(a) if either of the appointed arbitrators neglects or refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place;

(b) if one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for fifteen clear days after the service by the other party of a notice in writing to make the appointment, such other party having appointed his arbitrator before giving the notice, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent:

Provided that the Court may set aside any appointment as sole arbitrator made under clause (b) and either, on sufficient cause being shown, allow further time to the defaulting party to appoint an arbitrator or pass such other order as it thinks fit.

*Explanation.*—The fact that an arbitrator or umpire, after a request by either party to enter on and proceed with the reference, does not within one month comply with the request may constitute a neglect or refusal to act within the meaning of section 8 and this section.

10. (1) Where an arbitration agreement provides that a reference shall be to three arbitrators, one to be appointed by each party and the third by the two appointed arbitrators, the agreement shall have effect as if it provided for the appointment of an umpire, and not for the appointment of a third arbitrator, by the two arbitrators appointed by the parties.

Provisions as to appointment of three or more arbitrators.

(2) Where an arbitration agreement provides that a reference shall be to three arbitrators to be appointed otherwise than as mentioned in sub-section (1). the

(Chapter II.—Arbitration without Intervention of a Court.)

award of the majority shall, unless the arbitration agreement otherwise provides, prevail.

(3) Where an arbitration agreement provides for the appointment of more arbitrators than three, the award of the majority, or if the arbitrators are equally divided in their opinions, the award of the umpire shall, unless the arbitration agreement otherwise provides, prevail.

Power to Court to remove arbitrators or umpire in certain circumstances.

11. (1) The Court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award.

(2) The Court may remove an arbitrator or umpire who has misconducted himself or the proceedings.

(3) Where an arbitrator or umpire is removed under this section, he shall not be entitled to receive any remuneration in respect of his services.

(4) For the purposes of this section the expression "proceeding with the reference" includes, in a case where reference to the umpire becomes necessary, giving notice of that fact to the parties and to the umpire.

Power of Court where arbitrator is removed or his authority revoked.

12. (1) Where the Court removes an umpire who has not entered on the reference or one or more arbitrators (not being all the arbitrators), the Court may, on the application of any party to the arbitration agreement, appoint persons to fill the vacancies.

(2) Where the authority of an arbitrator or arbitrators or an umpire is revoked by leave of the Court, or where the Court removes an umpire who has entered on the reference or a sole arbitrator or all the arbitrators, the Court may, on the application of any party to the arbitration agreement, either—

(a) appoint a person to act as sole arbitrator in the place of the person or persons displaced, or

(b) order that the arbitration agreement shall cease to have effect with respect to the difference referred.

(3) A person appointed under this section as an arbitrator or umpire shall have the like power to act in the reference and to make an award as if he had been appointed in accordance with the arbitration agreement.

(Chapter II.—Arbitration without Intervention of a Court.)

13. The arbitrators or umpire shall, unless a different intention is expressed in the agreement, have power to—

Powers of arbitrator.

- (a) administer oath to the parties and witnesses appearing;
- (b) state a special case for the opinion of the Court on any question of law involved, or state the award, wholly or in part, in the form of a special case of such question for the opinion of the Court;
- (c) make the award conditional or in the alternative;
- (d) correct in an award any clerical mistake or error arising from any accidental slip or omission;
- (e) administer to any party to the arbitration such interrogatories as may, in the opinion of the arbitrators or umpire, be necessary.

14. (1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.

Award to be signed and filed.

(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.

(3) Where the arbitrators or umpire state a special case under clause (b) of section 13, the Court, after giving notice to the parties and hearing them, shall pronounce its opinion thereon and such opinion shall be added to, and shall form part of, the award.

15. The Court may by order modify or correct an award—

Power of Court to modify award.

- (a) where it appears that a part of the award is upon a matter not referred to arbitration

(Chapter II.—Arbitration without Intervention of a Court.)

and such part can be separated from the other part and does not affect the decision on the matter referred; or

(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or

(c) where the award contains a clerical mistake or an error arising from an accidental slip or omission.

Power to remit  
award.

16. (1) The Court may from time to time remit the award or any matter referred to arbitration to the arbitrators or umpire for reconsideration upon such terms as it thinks fit—

(a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration and such matter cannot be separated without affecting the determination of the matters referred; or

(b) where the award is so indefinite as to be incapable of execution; or

(c) where an objection to the legality of the award is apparent upon the face of it.

(2) Where an award is remitted under sub-section (1) the Court shall fix the time within which the arbitrator or umpire shall submit his decision to the Court:

Provided that any time so fixed may be extended by subsequent order of the Court.

(3) An award remitted under sub-section (1) shall become void on the failure of the arbitrator or umpire to reconsider it and submit his decision within the time fixed.

Judgment in  
terms of  
award.

17. Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award.

(Chapter II.—Arbitration without Intervention of a Court. Chapter III.—Arbitration with Intervention of a Court where there is no suit pending.)

18. (1) Notwithstanding anything contained in section 17, at any time after the filing of the award, whether notice of the filing has been served or not, upon being satisfied by affidavit or otherwise that a party has taken or is about to take steps to defeat, delay or obstruct the execution of any decree that may be passed upon the award, or that speedy execution of the award is just and necessary, the Court may pass such interim orders as it deems necessary.

Power of Court to pass interim orders.

(2) Any person against whom such interim orders have been passed may show cause against such orders, and the Court, after hearing the parties, may pass such further orders as it deems necessary and just.

19. Where an award has become void under subsection (3) of section 16 or has been set aside, the Court may by order supersede the reference and shall thereupon order that the arbitration agreement shall cease to have effect with respect to the difference referred.

Power to supersede arbitration where award becomes void or is set aside.

### CHAPTER III.

#### ARBITRATION WITH INTERVENTION OF A COURT WHERE THERE IS NO SUIT PENDING.

20. (1) Where any persons have entered into an arbitration agreement before the institution of any suit with respect to the subject-matter of the agreement or any part of it, and where a difference has arisen to which the agreement applies, they or any of them, instead of proceeding under Chapter II, may apply to a Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court.

Application to file in Court arbitration agreement.

(2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs and the remainder as defendant or defendants, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

(3) On such application being made, the Court shall direct notice thereof to be given to all parties to the agreement other than the applicants, requiring them to show cause within the time specified in the notice why the agreement should not be filed.

(Chapter III.—Arbitration with intervention of a Court where there is no suit pending. Chapter IV.—Arbitration in suits.)

(4) Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed by the parties, whether in the agreement or otherwise, or, where the parties cannot agree upon an arbitrator, to an arbitrator appointed by the Court.

(5) Thereafter the arbitration shall proceed in accordance with, and shall be governed by, the other provisions of this Act so far as they can be made applicable.

## CHAPTER IV.

### ARBITRATION IN SUITS.

Parties to suit may apply for order of reference.

21. Where in any suit all the parties interested agree that any matter in difference between them in the suit shall be referred to arbitration, they may at any time before judgment is pronounced apply in writing to the Court for an order of reference.

Appointment of arbitrator.

22. The arbitrator shall be appointed in such manner as may be agreed upon between the parties.

Order of reference.

23. (1) The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall in the order specify such time as it thinks reasonable for the making of the award.

(2) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this Act, deal with such matter in the suit.

Reference to arbitration by some of the parties.

24. Where some only of the parties to a suit apply to have the matters in difference between them referred to arbitration in accordance with, and in the manner provided by, section 21, the Court may, if it thinks fit, so refer such matters to arbitration (provided that the same can be separated from the rest of the subject-matter of the suit) in the manner provided in that section, but the suit shall continue so far as it relates to the parties who have not joined in the said application and to matters not contained in the said reference as if no such application had been made, and an award made in pursuance of such a reference shall be binding only on the parties who have joined in the application.

(Chapter IV.—*Arbitration in suits.* Chapter V.—*General.*)

25. The provisions of the other Chapters shall, so far as they can be made applicable, apply to arbitration under this Chapter:

Provisions applicable to arbitrations under this Chapter.

Provided that the Court may, in any of the circumstances mentioned in sections 8, 10, 11 and 12, instead of filling up the vacancies or making the appointments, make an order superseding the arbitration and proceed with the suit, and where the Court makes an order superseding the arbitration under section 19, it shall proceed with the suit.

## CHAPTER V.

### GENERAL.

26. Save as otherwise provided in this Act, the provisions of this Chapter shall apply to all arbitrations.

Application of Chapter.

27. (1) Unless a different intention appears in the arbitration agreement, the arbitrators or umpire may, if they think fit, make an interim award.

Power of arbitrators to make an interim award.

(2) All references in this Act to an award shall include references to an interim award made under sub-section (1).

28. (1) The Court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time the time for making the award.

Power to Court only to enlarge time for making award.

(2) Any provision in an arbitration agreement whereby the arbitrators or umpire may, except with the consent of all the parties to the agreement, enlarge the time for making the award, shall be void and of no effect.

29. Where and in so far as an award is for the payment of money the Court may in the decree order interest, from the date of the decree at such rate as the Court deems reasonable, to be paid on the principal sum as adjudged by the award and confirmed by the decree.

Interest on awards.

30. An award shall not be set aside except on one or more of the following grounds, namely:—

Grounds for setting aside award.

(a) that an arbitrator or umpire has misconducted himself or the proceedings;



*(Chapter V.—General.)*

- (b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under section 35;
- (c) that an award has been improperly procured or is otherwise invalid.

**Jurisdiction.**

31. (1) Subject to the provisions of this Act, an award may be filed in any Court having jurisdiction in the matter to which the reference relates.

(2) Notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, all questions regarding the validity, effect or existence of an award or an arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the Court in which the award under the agreement has been, or may be, filed, and by no other Court.

(3) All applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the Court where the award has been, or may be, filed, and to no other Court.

(4) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where in any reference any application under this Act has been made in a Court competent to entertain it, that Court alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that Court and in no other Court.

**Bar to suit contesting arbitration agreement or award.**

32. Notwithstanding any law for the time being in force, no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award. nor shall any arbitration agreement or award be set aside, amended, modified or in any way affected otherwise than as provided in this Act.

**Arbitration agreement or award to be contested by application.**

33. Any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the Court and the Court shall decide the question on affidavits:

## (Chapter V.—General.)

Provided that where the Court deems it just and expedient, it may set down the application for hearing on other evidence also, and it may pass such orders for discovery and particulars as it may do in a suit.

34. Where any party to an arbitration agreement or any person claiming under him commences any legal proceedings against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time before filing a written statement or taking any other steps in the proceedings, apply to the judicial authority before which the proceedings are pending to stay the proceedings; and if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, such authority may make an order staying the proceedings.

Power to stay legal proceedings where there is an arbitration agreement.

35. (1) No reference nor award shall be rendered invalid by reason only of the commencement of legal proceedings upon the subject-matter of the reference, but when legal proceedings upon the whole of the subject-matter of the reference have been commenced between all the parties to the reference and a notice thereof has been given to the arbitrators or umpire, all further proceedings in a pending reference shall, unless a stay of proceedings is granted under section 34, be invalid.

Effect of legal proceedings on arbitration.

(2) In this section the expression "parties to the reference" includes any persons claiming under any of the parties and litigating under the same title.

36. Where it is provided (whether in the arbitration agreement or otherwise) that an award under an arbitration agreement shall be a condition precedent to the bringing of an action with respect to any matter to which the agreement applies, the Court, if it orders (whether under this Act or any other law) that the agreement shall cease to have effect as regards any particular difference, may further order that the said provision shall also cease to have effect as regards that difference.

Power of Court where arbitration agreement is ordered not to apply to a particular difference, to order that a provision making an award a condition precedent to an action shall not apply to such difference.

## (Chapter V.—General.)

## Limitations.

37. (1) All the provisions of the Indian Limitation Act, 1908, shall apply to arbitrations as they apply to IX of 1908. proceedings in Court.

(2) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, a cause of action shall, for the purpose of limitation, be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.

(3) For the purposes of this section and of the Indian Limitation Act, 1908, an arbitration shall be deemed to be commenced when one party to the arbitration agreement serves on the other parties thereto a notice requiring the appointment of an arbitrator, or where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring that the difference be submitted to the person so named or designated.

(4) Where the terms of an agreement to refer future differences to arbitration provide that any claims to which the agreement applies shall be barred unless notice to appoint an arbitrator is given or an arbitrator is appointed or some other step to commence arbitration proceedings is taken within a time fixed by the agreement, and a difference arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(5) Where the Court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration agreement shall cease to have effect with respect to the difference referred, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Indian Limitation Act, 1908, for the commencement of the proceedings (including arbitration) with respect to the difference referred.

Disputes as to  
arbitrator's  
remuneration  
of costs.

38. (1) If in any case an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him, the Court may, on an application in this behalf, order that the arbitrator or umpire

*(Chapter V.—General. Chapter VI.—Appeals.*

shall deliver the award to the applicant on payment into Court by the applicant of the fees demanded, and shall, after such inquiry, if any, as it thinks fit, further order that out of the money so paid into Court there shall be paid to the arbitrator or umpire by way of fees such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.

(2) An application under sub-section (1) may be made by any party to the reference unless the fees demanded have been fixed by written agreement between him and the arbitrator or umpire, and the arbitrator or umpire shall be entitled to appear and be heard on any such application.

(3) The Court may make such orders as it thinks fit respecting the costs of an arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them.

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## CHAPTER VI.

### APPEALS.

39. (1) An appeal shall lie from the following <sup>Appealable</sup> orders passed under this Act (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order:—

An order—

- (i) superseding an arbitration;
- (ii) on an award stated in the form of a special case;
- (iii) modifying or correcting an award;
- (iv) filing or refusing to file an arbitration agreement;
- (v) staying or refusing to stay legal proceedings where there is an arbitration agreement;
- (vi) setting aside or refusing to set aside an award:

Provided that the provisions of this section shall not apply to any order passed by a Small Cause Court.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to His Majesty in Council.

## (Chapter VII.—Miscellaneous.)

## CHAPTER VII.

## MISCELLANEOUS.

Small Cause Court not to have jurisdiction over arbitrations save arbitrations in suits before it.

Procedure and powers of Court.

40. A Small Cause Court shall have no jurisdiction over any arbitration proceedings or over any application arising thereout save on application made under section 21.

41. Subject to the provisions of this Act and of rules made thereunder—

- (a) the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before V of 1908. the Court, and to all appeals, under this Act, and
- (b) the Court shall have, for the purpose of, and in relation to, arbitration proceedings, the same power of making orders in respect of any of the matters set out in the Second Schedule as it has for the purpose of, and in relation to, any proceedings before the Court;

Provided that nothing in clause (b) shall be taken to prejudice any power which may be vested in an arbitrator or umpire for making orders with respect to any of such matters.

Service of notice by party or arbitrator.

42. Any notice required by this Act to be served otherwise than through the Court by a party to an arbitration agreement or by an arbitrator or umpire shall be served in the manner provided in the arbitration agreement, or if there is no such provision, either—

- (a) by delivering it to the person on whom it is to be served, or
- (b) by sending it by post in a letter addressed to that person at his usual or last known place of abode or business in British India and registered under Chapter VI of the Indian Post Office Act, 1898.

VI of 1898.

Power of Court to issue processes for appearance before arbitrator.

43. (1) The Court shall issue the same processes to the parties and witnesses whom the arbitrator or umpire desires to examine as the Court may issue in suits tried before it.

(2) Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the reference, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitrator or umpire as they would incur for the like offences in suits tried before the Court.

*(Chapter VII.—Miscellaneous.)*

(3) In this section the expression “processes” includes summonses and commissions for the examination of witnesses and summonses to produce documents.

44. The High Court may make rules consistent with this Act as to— Power to High Court to make rules

- (a) the filing of awards and all proceedings consequent thereon or incidental thereto;
- (b) the filing and hearing of special cases and all proceedings consequent thereon or incidental thereto;
- (c) the staying of any suit or proceeding in contravention of an arbitration agreement;
- (d) the forms to be used for the purposes of this Act;
- (e) generally, all proceedings in Court under this Act.

45. The provisions of this Act shall be binding on the Crown. Crown to be bound.

46. The provisions of this Act, except sub-section (1) of section 6 and sections 7, 12 and 37, shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as this Act is inconsistent with that other enactment or with any rules made thereunder. Application of Act to statutory arbitrations.

47. Subject to the provisions of section 46, and save in so far as is otherwise provided by any law for the time being in force, the provisions of this Act shall apply to all arbitrations and to all proceedings thereunder: Act to apply to all arbitrations.

Provided that an arbitration award otherwise obtained may with the consent of all the parties interested be taken into consideration as a compromise or adjustment of a suit by any Court before which the suit is pending.

48. The provisions of this Act shall not apply to any reference pending at the commencement of this Act, to which the law in force immediately before the commencement of this Act shall, notwithstanding any repeal effected by this Act, continue to apply. Saving for pending references.

49. (1) The enactments specified in the Third Schedule are hereby repealed to the extent mentioned in the fourth column thereof. Repeals and amendments.

(2) The enactments specified in the Fourth Schedule are hereby amended to the extent and in the manner mentioned in the fourth column thereof.

*(The First Schedule )*

## THE FIRST SCHEDULE.

*(See section 3.)*

## IMPLIED CONDITIONS OF ARBITRATION AGREEMENTS.

1. Unless otherwise expressly provided, the reference shall be to a sole arbitrator.

2. If the reference is to an even number of arbitrators, the arbitrators shall appoint an umpire not later than one month from the latest date of their respective appointments.

3. The arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow.

4. If the arbitrators have allowed their time to expire without making an award or have delivered to any party to the arbitration agreement or to the umpire a notice in writing stating that they cannot agree, the umpire shall forthwith enter on the reference in lieu of the arbitrators.

5. The umpire shall make his award within two months of entering on the reference or within such extended time as the Court may allow.

6. The parties to the reference and all persons claiming under them shall subject to the provisions of any law for the time being in force, submit to be examined by the arbitrators or umpire on oath or affirmation in relation to the matters in difference and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings and documents within their possession or power respectively, which may be required or called for, and do all other things which, during the proceedings on the reference, the arbitrators or umpire may require.

7. The award shall be final and binding on the parties and persons claiming under them respectively.

8. The costs of the reference and award shall be in the discretion of the arbitrators or umpire who may direct to, and by whom, and in what manner, such costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof and may award costs to be paid as between legal practitioner and client.

(*The Second Schedule. The Third Schedule.*)

## THE SECOND SCHEDULE.

(*See section 41.*)

### POWERS OF COURT.

1. The preservation, interim custody or sale of any goods which are the subject-matter of the reference.

2. Securing the amount in difference in the reference.

3. The detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon or into any land or building in the possession of any party to the reference, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

4. Interim injunctions or the appointment of a receiver.

5. The appointment of a guardian for a minor or person of unsound mind for the purposes of arbitration proceedings.

## THE THIRD SCHEDULE.

[*See section 49 (1).*]

### ENACTMENTS REPEALED.

Year.	No.	Short title.	Extent of repeal.
1	2	3	4
1899	IX	The Indian Arbitration Act, 1899.	The whole.
1908	V	The Code of Civil Procedure, 1908.	Section 89, clauses (a) to (f) (both inclusive) of sub-section (1) of section 104 and the Second Schedule.



(The Fourth Schedule.)

## THE FOURTH SCHEDULE.

[See section 49 (2).]

## ENACTMENTS AMENDED.

Year.	No.	Short title.	Amendments.
1	2	3	4
1863	XX	The Religious Endowments Act, 1863.	(a) In section 16— (i) for the words and figure "Chapter VI of the Code of Civil Procedure" the words and figures "Chapter IV of the Arbitration Act, 1940" shall be substituted; (ii) for the words and figure "section 312 of the said Code" the words and figure "section 21 of the said Act" shall be substituted. (b) In section 17, for the words and figure "section 312 of the said Code of Civil Procedure" the words and figures "section 21 of the Arbitration Act, 1940" shall be substituted.
1877	I	The Specific Relief Act, 1877.	In section 21— (i) for the words and figure "Code of Civil Procedure and the Indian Arbitration Act, 1899" the words and figure "Arbitration Act, 1940" shall be substituted; (ii) after the words "but if any person who has made such a contract" the words "other than an arbitration agreement to which the provisions of the said Act apply" shall be inserted.
1908	IX	The Indian Limitation Act, 1908.	In the First Schedule— (i) for Article 158 the following shall be substituted, namely:— "158. Under the Thirty days. The date of Arbitration Act, 1940, to set service of the aside an award notice of filing or to get an award remitted of the award." for reconsideration. (ii) in Articles 159 and 179, for the words "same Code" in the first column the words and figure "Code of Civil Procedure, 1908" shall be substituted; (iii) for Article 178 the following shall be substituted, namely:— "178. Under the Ninety The date of service of the Arbitration Act, days. notice of the 1940, for the filing in Court of making of the an award. award."
1910	IX	The Indian Electricity Act, 1910.	In section 52, for the figure "1899" the figure "1940" shall be substituted.
1913	VII	The Indian Companies Act, 1913.	In section 152— (i) for the figure "1899" in both places where it occurs, the figure "1940" shall be substituted; (ii) in sub-section (3) the words "other than those restricting the application of the Act in respect of the subject-matter of the arbitration" shall be omitted.

**THE EXCESS PROFITS TAX ACT, 1940.**

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**C O N T E N T S.****SECTIONS.**

1. Short title, extent and commencement.
2. Definitions.
3. Excess profits tax authorities.
4. Charge of tax.
5. Application of Act.
6. Standard profits.
7. Relief on occurrence of deficiency of profits.
8. Successions and amalgamations.
9. Inter-connected companies.
10. Artificial transactions.
11. Relief in respect of double excess profits taxation.
12. Allowance of excess profits tax in computing income for income-tax purposes.
13. Issue of notice for assessment.
14. Assessments.
15. Profits escaping assessment.
16. Penalties.
17. Appeals.
18. Appeal to Commissioner against Appellate Assistant Commissioner's orders imposing penalties or enhancing assessments or penalties.
19. Power of revision.
20. Rectification of mistakes.
21. Application of provisions of Act XI of 1922.
22. Income-tax papers to be available for the purposes of this Act.
23. Failure to deliver returns or statements.
24. False statement and declaration.
25. Institution of proceedings and composition of offences.
26. Power of Central Board of Revenue to grant relief in special cases.
27. Power to make rules.

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**SCHEDULE I.**—Rules for the computation of profits for purposes of Excess Profits Tax.

**SCHEDULE II.**—Rules for computing the average amount of capital.

**SCHEDULE III.**—Rules for determining the amount of capital held by a company through other companies.

ACT NO. XV OF 1940.<sup>1</sup>

[6th April, 1940.]

An Act to impose a tax on excess profits arising out of certain businesses.

**W**HEREAS it is expedient to impose a tax on excess profits arising out of certain businesses in the conditions prevailing during the present hostilities;

It is hereby enacted as follows:—

Short title,  
extent and  
commence-  
ment.

1. (1) This Act may be called the Excess Profits Tax Act, 1940.

(2) It extends to the whole of British India.

(3) It shall come into force on such date<sup>2</sup> as the Central Government may, by notification in the official Gazette, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “accounting period” in relation to any business means—

(a) where the accounts of the business are made up for successive periods of twelve months, each of such periods:

(b) in any other case, such period as the Excess Profits Tax Officer may determine:

Provided that in determining any accounting period under sub-clause (b) the Excess Profits Tax Officer shall have regard to the period, if any, which is, or has been, determined as the previous year for that business for the purposes of the Indian Income-tax Act, 1922;

XI of 1922.

<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1940, Pt. V, p. 17; for the Report of the Select Committee, see *ibid.*, p. 115.

This Act has been applied to—

British Baluchistan, see Gazette of India, 1940, Pt. I, p. 907;

all the partially excluded areas of the province of Orissa with effect from the 13th April, 1940, by Orissa Govt. Notification No. 6676-F., dated 3rd July, 1940;

the Darjeeling district and the partially excluded areas of Mymensingh district with effect from 25th July, 1940, by Bengal Govt. Notification No. 854-A. R., dated 20th July, 1940.

<sup>2</sup> The 13th April, 1940, see Gazette of India, 1940, Pt. I, p. 499.

The Act came into force in the Chota Nagpur Division and the Santhal Parganas on the 13th April, 1940, see s. 3 of Bihar Regulation I of 1941.

(2) "Appellate Assistant Commissioner" means a person appointed to be an Appellate Assistant Commissioner of Excess Profits Tax under section 3;

(3) "average amount of capital" means the average amount of capital employed in any business as computed in accordance with the Second Schedule;

(4) "Board of Referees" means a Board of Referees appointed under section 3;

(5) "business" includes any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture or any profession or vocation, but does not include a profession carried on by an individual or by individuals in partnership if the profits of the profession depend wholly or mainly on his or their personal qualifications unless such profession consists wholly or mainly in the making of contracts on behalf of other persons or the giving to other persons of advice of a commercial nature in connection with the making of contracts:

Provided that where the functions of a company or of a society incorporated by or under any enactment consist wholly or mainly in the holding of investments or other property the holding of the investments or property shall be deemed for the purpose of this definition to be a business carried on by such company or society:

Provided further that all businesses to which this Act applies carried on by the same person shall be treated as one business for the purposes of this Act;

(6) "chargeable accounting period" means—

(a) any accounting period falling wholly within the term beginning on the 1st day of September, 1939, and ending on the 1<sup>st</sup> [31st day of March, 1942] and

(b) where any accounting period falls partly within and partly without the said term, such part of that accounting period as falls within the said term:

(7) "Commissioner" means a person appointed to be a Commissioner of Excess Profits Tax under section 3;

(8) "company" means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or

VII of 1913.

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<sup>1</sup> Subs. for " 31st day of March, 1941 " by s. 8 of the Indian Finance Act, 1941 (7 of 1941).

Letters Patent, or of an Act of the Legislature of a British possession or of a law of an Indian State, and includes any foreign association whether incorporated or not which the Central Board of Revenue may, by general or special order, declare to be a company for the purposes of this Act;

(9) "deficiency of profits" means—

- (i) where profits have been made in any chargeable accounting period, the amount by which such profits fall short of the standard profits;
- (ii) where a loss has been made in any chargeable accounting period, the amount of the loss added to the amount of the standard profits;

(10) "director" includes any person occupying the position of a director by whatever name called and also includes any person who—

- (i) is a manager of the company or concerned in the management of the business; and
- (ii) is remunerated out of the funds of the business; and
- (iii) is the beneficial owner of not less than twenty per cent. of the ordinary share capital of the company;

(11) "dividend" has the meaning assigned to the expression in section 2 of the Indian Income-tax Act, 1922;

XI of 1922.

(12) "Excess Profits Tax Officer" means a person appointed to be an Excess Profits Tax Officer under section 3;

(13) "income" has the meaning assigned to the expression in section 2 of the Indian Income-tax Act, 1922;

XI of 1922.

(14) "fixed rate" in relation to dividends on share capital, other than ordinary share capital, includes a rate fluctuating in accordance with the maximum rate of income-tax;

(15) "Inspecting Assistant Commissioner" means a person appointed to be an Inspecting Assistant Commissioner of Excess Profits Tax under section 3;

(16) "loss" means a loss computed in the same manner as, for the purposes of this Act, profits are to be computed;

<sup>1</sup>[(16A) "ordinary share capital" has the meaning assigned to that expression in sub-section (8) of section 9;]

(17) "person" includes a Hindu undivided family;

(18) "prescribed" means prescribed by rules made under this Act;

(19) "profits" means profits as determined in accordance with the First Schedule;

(20) "standard profits" means standard profits as computed in accordance with the provisions of section 6;

(21) "statutory percentage" means—

(a) in relation to a business carried on by a body corporate (other than a company the directors whereof have a controlling interest therein), eight per cent. per annum;

<sup>2</sup>[(b) in relation to a business carried on by a partnership of which one or more of the partners is a body corporate (other than a company the directors whereof have a controlling interest therein), such a rate per cent. as is equivalent to—

(i) eight per cent. per annum on so much of the average amount of the capital employed in the business during the chargeable accounting period as represents the share of any such body corporate, and

(ii) ten per cent. per annum on the remainder of that amount;

(c) in relation to a business to which neither sub-clause (a) nor sub-clause (b) applies, ten per cent. per annum:].

Provided that in relation to any decrease of capital the statutory percentage shall be in all cases six per cent.:

Provided further that where the business was commenced on or after the 1st day of July, 1938, the foregoing percentages shall be increased from eight, ten and six per cent. to ten, twelve and eight per cent., respectively;

(22) "written down value" has the meaning assigned to that expression in sub-section (5) of section 10 of the Indian Income-tax Act, 1922.

XXI of 1922.

<sup>1</sup> Ins. by s. 2 of the Excess Profits Tax (Amendment) Act, 1941 (11 of 1941).

<sup>2</sup> Subs. for the original clause (b) by s. 2 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from the 13th April, 1940).

Excess profits  
tax authorities.

3. (1) There shall be the following classes of excess profits tax authorities for the purposes of this Act, namely:—

- (a) the Central Board of Revenue;
- (b) Commissioners of Excess Profits Tax;
- (c) Assistant Commissioners of Excess Profits Tax, who may be either Appellate Assistant Commissioners of Excess Profits Tax or Inspecting Assistant Commissioners of Excess Profits Tax;
- (d) Excess Profits Tax Officers;
- (e) Boards of Referees.

(2) Every Commissioner of Excess Profits Tax, Appellate Assistant Commissioner of Excess Profits Tax, Inspecting Assistant Commissioner of Excess Profits Tax and Excess Profits Tax Officer shall be a person who is exercising the functions of Commissioner of Income-tax, Appellate Assistant Commissioner of Income-tax, Inspecting Assistant Commissioner of Income-tax and Income-tax Officer, respectively, under the Indian Income-tax Act, 1922. XI of 1922.

(3) The Central Board of Revenue shall, subject to the provisions of sub-section (2), appoint such persons as Commissioners of Excess Profits Tax, Appellate Assistant Commissioners of Excess Profits Tax, Inspecting Assistant Commissioners of Excess Profits Tax and Excess Profits Tax Officers as it thinks fit and such persons shall perform their functions in respect of such cases as the Central Board of Revenue may assign to them:

Provided that such directions shall be made entirely at the discretion of the Central Board of Revenue, and, in particular, it shall be competent for that Board to assign a case or class of cases to an officer who is not exercising in respect of that case or class of cases the corresponding functions in relation to the charge of income-tax under the Indian Income-tax Act, 1922. XI of 1922.

(4) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Central Board of Revenue:

Provided that nothing in this sub-section applies to a Board of Referees:

Provided further that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions.

(5) A Board of Referees shall consist of not less than three and not more than five persons, of whom not less than one-half shall be non-officials having business experience, and one shall be a judicial officer who has exercised the powers of a District Judge or who possesses such qualifications as are normally required for appointment to the post of District Judge, and who has held judicial office for a period of not less than ten years.

(6) Subject to the provisions of sub-section (5), the Central Government may make rules regulating the formation, composition and procedure of Boards of Referees.

4. <sup>1</sup>[(1)] Subject to the provisions of this Act, <sup>Charge of tax</sup> there shall, in respect of any business to which this Act applies, be charged, levied and paid on the amount by which the profits during any chargeable accounting period exceed the standard profits a tax (in this Act referred to as "excess profits tax") which shall, in respect of any chargeable accounting period ending on or before the 31st day of March, 1941, be equal to fifty per cent. of that excess and shall, in respect of any chargeable accounting period beginning after that date, be equal to such percentage of that excess as may be fixed by the annual Finance Act:

XI of 1922.

Provided that any profits which are, under the provisions of sub-section (3) of section 4 of the Indian Income-tax Act, 1922, exempt from income-tax, and all profits from any business of life insurance shall be totally exempt from excess profits tax under this Act.

<sup>2</sup>[(2) Where a chargeable accounting period falls partly before and partly after the end of March, 1941, the foregoing provisions of this section shall apply as if so much of that chargeable accounting period as falls before, and so much of that chargeable accounting period as falls after, the said end of March were each a separate chargeable accounting period, and as if the excess of profits of that separate chargeable accounting period were an apportioned part of the excess of profits arising in the whole period; and any apportionment required to be made

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<sup>1</sup> Renumbered by s. 3 of the Excess Profits Tax (Amendment) Act, 1941 (11 of 1941).

<sup>2</sup> Added by s. 3, *ibid.*



by this sub-section shall be made by reference to the number of months or fractions of months in each of the parts of the whole chargeable accounting period.]

Application of  
Act.

5. This Act shall apply to every business of which any part of the profits made during the chargeable accounting period is chargeable to income-tax by virtue of the provisions of sub-clause (i) or sub-clause (ii) of clause (b) of sub-section (1) of section 4 of the Indian Income-tax Act, 1922, or of clause XI of 1922. (c) of that sub-section:

Provided that this Act shall not apply to any business the whole of the profits of which accrue or arise without British India where such business is carried on by or on behalf of a person who is resident but not ordinarily resident in British India unless the business is controlled in India:

Provided further that where the profits of a part only of a business carried on by a person who is not resident in British India or not ordinarily so resident accrue or arise in British India or are deemed under the Indian Income-tax Act, 1922, so to accrue or XI of 1922. arise, then, except where the business being the business of a person who is resident but not ordinarily resident in British India is controlled in India, this Act shall apply only to such part of the business, and such part shall for all the purposes of this Act be deemed to be a separate business.

Standard  
profits.

6. (1) For the purposes of this Act, the standard profits of a business in relation to any chargeable accounting period shall, subject to the provisions of sub-sections (3) and (4), be an amount bearing to the profits of the business during the standard period, if in respect of that business a standard period is available, the same proportion as the chargeable accounting period bears to the standard period:

Provided that if the average amount of capital employed in the business during such chargeable accounting period is greater or less than the average amount of capital employed during the standard period, such amount shall be increased or decreased, as the case may be, by an amount calculated by applying the statutory percentage to the amount of such increase or decrease:

Provided further that in the case of a business which was commenced on or after the 31st day of March, 1936, the standard profits shall, at the option of the person carrying on the business, be an amount

calculated by applying the statutory percentage to the average amount of capital employed in the business during such chargeable accounting period.

(2) For the purposes of this section the standard period shall, at the option of the person carrying on the business, be—

- (a) the “previous year” as determined under section 2 of the Indian Income-tax Act, 1922, for the purpose of the income-tax assessment for the year ending on the 31st day of March, 1937, or the previous year as so determined for the year ending on the 31st day of March, 1938; or
- (b) the “previous year” as so determined for the year ending on the 31st day of March, 1937, and that for the year ending on the 31st day of March, 1939; or
- (c) the “previous year” as so determined for the year ending on the 31st day of March, 1938, and that for the year ending on the 31st day of March, 1939; or
- (d) the “previous year” as so determined for the year ending on the 31st day of March, 1939, and that for the year ending on the 31st day of March, 1940:

Provided that in no case shall any period of less than nine months be taken as a standard period.

(3) If, within the period specified in the notice issued under sub-section (1) of section 18, <sup>1</sup>[or within the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section] the person carrying on the business makes an application to the Excess Profits Tax Officer in this behalf, the Excess Profits Tax Officer shall refer the application to the Board of Referees, and if the Board is satisfied that during the standard period the profits of the business were less than might at the beginning of that period have been reasonably expected, it may direct that the standard profits shall be computed as if the profits during the standard period were such greater amount as it thinks just:

Provided that such amount shall not exceed the statutory percentage of the average amount of the capital employed in the business unless the Board

<sup>1</sup> Ins. by s. 3 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from the 13th April, 1940).

is satisfied that owing to some specific cause peculiar to the business it is just that a greater amount should be allowed.

<sup>1</sup>[Provided further that a determination on an application under this sub-section—

- (a) shall have effect with respect to all subsequent chargeable accounting periods;
- (b) shall exclude any further application under this sub-section.]

(4) The standard profits shall be taken to be rupees thirty-six thousand in any case in which the standard profits computed in accordance with sub-section (1) are less than this sum:

Provided that if the chargeable accounting period is greater or less than one year the sum of rupees thirty-six thousand shall for the purpose of this sub-section be increased or decreased proportionately.

(5) Where the standard period includes any period prior to the commencement of Part III of the Government of India Act, 1935, during which Burma was part of British India, there shall, in computing the standard profits of a business under this section, be excluded from the profits of the business during the standard period so much of such profits as arose or accrued or were received in Burma unless such profits are also included in the profits of the business during the chargeable accounting period.

Relief on  
occurrence of  
deficiency of  
profits.

7. Where a deficiency of profits occurs in any chargeable accounting period in any business, the profits of the business chargeable with excess profits tax shall be deemed to be reduced and relief shall be granted in accordance with the following provisions:—

- (a) the aggregate amount of the profits so chargeable for the previous chargeable accounting periods shall be deemed to be reduced by the amount of the deficiency of profits and the amount of excess profits tax payable in respect thereof shall be deemed to be reduced accordingly and the relief necessary to give effect to the reduction shall be given by repayment or otherwise;
- (b) where the amount of the deficiency of profits exceeds the aggregate amount of the profits so chargeable for the previous chargeable accounting periods, or where there is no previous chargeable accounting period, the

<sup>1</sup> Added by s. 3 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from the 13th April, 1940).†

balance of the deficiency of profits or the whole of the deficiency, as the case may be, shall be applied in reducing any profits so chargeable for the next subsequent chargeable accounting period, and if and so far as it exceeds the amount of those profits, any profits so chargeable for the next subsequent chargeable accounting period and so on.

<sup>1</sup>[Provided that a deficiency of profits occurring in a chargeable accounting period beginning on or after the 1st day of April, 1941, shall first be applied so as to reduce profits chargeable to tax arising in another chargeable accounting period beginning on or after the said 1st day of April, and a deficiency of profits occurring in a chargeable accounting period ending on or before the 31st day of March, 1941, shall first be applied so as to reduce profits chargeable to tax arising in another chargeable accounting period ending on or before the said 31st day of March; and where owing to an insufficiency of profits for chargeable accounting periods ending on or before the said 31st day of March, or, as the case may be, beginning on or after the said 1st day of April, the whole or any part of the deficiency is applied otherwise than as aforesaid,—

- (a) the application shall be treated as provisional only; and
- (b) if it thereafter appears that there is no longer such an insufficiency as aforesaid, such adjustment shall be made as the Central Board of Revenue may by written order direct:

Provided further that where a chargeable accounting period falls partly before and partly after the end of March, 1941, the provisions of the preceding proviso shall apply as if so much of the chargeable accounting period as falls before, and so much of the chargeable accounting period as falls after, the said end of March, were each a separate chargeable accounting period, and as if the deficiency of profits of that separate chargeable accounting period were an apportioned part of the deficiency of profits

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<sup>1</sup> Added by s. 4 of the Excess Profits Tax (Amendment) Act, 1941 (11 of 1941).

occurring in the whole period; and any apportionment required to be made by this proviso shall be made by reference to the number of months or fractions of months in each of the parts of the whole chargeable accounting period.]

Successions  
and amalgamations.

8. (1) As from the date of any change in the persons carrying on a business, the business shall, subject to the provisions of this section, be deemed for all the purposes of this Act except for the purposes of determining the amount of the statutory percentage to have been discontinued, and a new business to have been commenced.

(2) Where the change took place before the 1st day of September, 1939, and consisted in the death or retirement of a partner, or the taking in of a partner, the persons carrying on the business after the change may, by notice given in writing before the prescribed date to the Excess Profits Tax Officer, elect that, for the purposes of the provisions of this Act relating to the computation of standard profits, the business shall not be deemed to have been discontinued.

(3) A business shall not, for the purposes of the provisions of this Act relating to the computation of standard profits, be deemed to be discontinued by reason of any change occurring on or after the 1st day of September, 1939, in the persons carrying it on, and the standard profits of the business in relation to any chargeable accounting period shall be computed accordingly, and, in particular, in computing the capital employed in the business after the change <sup>1</sup>[and in considering, for the purposes of computing the profits of, and the capital employed during, any chargeable accounting period, whether any and, if so, what deductions are to be made in respect of depreciation of buildings, plant and machinery,] no regard shall be had to any consideration given in respect of the transfer of the business or any of the assets thereof on the occasion of the change.

(4) Where, on or after the 1st day of September, 1939, two or more businesses are amalgamated, the resulting business shall be treated for the purposes of

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<sup>1</sup>Ins. by s. 4 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

the provisions of this Act relating to the computation of standard profits as if—

- (a) it had been in existence throughout the period during which there were in existence any of the former businesses;
- (b) any profits made or losses incurred or capital employed in any of those former businesses had been made, incurred or employed in the resulting business; and
- (c) any assets of any of those former businesses had become assets of the resulting business when they became assets of the former business;

and, in particular, in computing the capital employed in the resulting business, <sup>1</sup>[and in considering, for the purposes of computing the profits of, and the capital, employed during, any chargeable accounting period, whether any and, if so, what deductions are to be made in respect of depreciation of buildings, plant and machinery,] no regard shall be had to any consideration given in respect of the transfer of any of those former businesses or any of the assets thereof on the occasion of the amalgamation.

(5) Where, on or after the 1st day of September, 1939, part of a business is transferred as a going concern by the person theretofore carrying it on to another person, the part transferred and the part not transferred shall each be deemed for the purposes of the provisions of this Act relating to the computation of standard profits to be a continuation of the original business, and the said provisions, including the provisions of this section relating to amalgamations, shall apply accordingly, <sup>2</sup> \* \* \* \* :

Provided that, for the purposes aforesaid, such apportionments shall be made of the profits made, and losses incurred, and the capital employed, in the original business, and of any assets of the original business as may appear to the Excess Profits Tax Officer, or on appeal in the prescribed time and manner to the Board of Referees, to that Board to be just.

(6) Notwithstanding anything in the foregoing provisions of this section, where a business was carried on immediately before the 1st day of April, 1936, and that business, or the main part of that business, was transferred after the said day and before the

<sup>1</sup> Ins. by s. 4 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

<sup>2</sup> Certain words were omitted, *ibid* (with effect from the 13th April, 1940).

1st day of September, 1939, by the person carrying it on to another person, the Excess Profits Tax Officer, if he is satisfied that the business carried on after the transference was not substantially different from the business or part transferred, shall, on the application of the person carrying on the business after the transference, treat that person, for the purposes of the provisions of this Act relating to the computation of standard profits, as if he had carried on the transferred business or part of the business as from the date of the commencement of that business, 1 \* \* \* \* \*

(7) Where, on or after the 1st day of September, 1939, a partner in a firm carrying on a business to which this Act applies dies, then notwithstanding anything contained in sub-section (1) any deficiency of profits in respect of any chargeable accounting period ending on or before the date of his death shall, if it has not been fully applied in reducing the profits of any chargeable accounting period under section 7, be carried forward and applied in reducing any profits from the same business carried on by the surviving partner or partners in the first chargeable accounting period after the death of the partner, and if and so far as it exceeds the amount of those profits, in reducing any profits from such business in the next subsequent chargeable accounting period and so on.

<sup>2</sup>[(8) Where—

- (a) a business is, by virtue of sub-section (2) or sub-section (3), deemed not to have been discontinued; or
- (b) a business is, by virtue of sub-section (4), to be treated as if it had been in existence throughout the period during which there was in existence any other business; or
- (c) a business is, by virtue of sub-section (5), to be treated as a continuation of another business; or
- (d) any person who is carrying on a business after a transfer is treated, by virtue of sub-section (6), as having carried on the business as from a date before the transfer,

the provisions of this Act relating to the computation of profits and capital for the purposes of excess profits tax shall, both as respects the standard period and any chargeable accounting period, have effect

<sup>1</sup> Certain words were omitted by s. 4 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

<sup>2</sup> Added, *ibid* (with effect from the 13th April, 1940).

subject to such modifications, if any, as the Excess Profits Tax Officer may think just, and the Excess Profits Tax Officer may make such alterations in the periods which would otherwise be the chargeable accounting periods of the business as he thinks proper:

Provided that if the Excess Profits Tax Officer makes any such modifications and the person carrying on the business is dissatisfied with the modifications so made, or if the person carrying on the business is dissatisfied with the refusal of the Excess Profits Tax Officer to make any such modifications, he may, at any time before the expiry of forty-five days from the date on which the order of the Excess Profits Tax Officer is communicated to him, appeal to the Board of Referees through the Excess Profits Tax Officer.]

9. (1) Where any interest, annuity or other annual payment, or any royalty or rent, is paid by one company to another company, and one of those companies is a subsidiary of the other, or both are subsidiaries of a third company, the capital, profits and losses of both companies shall be computed for the purposes of this Act as if—

Inter-connected companies.

- (a) the interest, annuity, annual payment, royalty or rent were not payable;
- (b) any debt in respect of which any such interest is payable did not exist; and
- (c) any asset in respect of which any such royalty or rent is payable were the property of the company paying the royalty or the rent.

<sup>1</sup>[(1A) Where—

- (a) any debt is owing to any company by another company; and
- (b) one of those companies is a subsidiary of the other, or both are subsidiaries of a third company; and
- (c) no interest is payable in respect of the debt, but the circumstances in which the debt came into existence or is allowed to continue to exist are such that the debt represents in substance capital employed in the business of the debtor company,

the capital of both companies shall be computed as if the debt did not exist.]

<sup>1</sup> Ins. by s. 5 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from the 13th April, 1940).



(2) Where—

- (a) a company (hereinafter referred to as “the principal company”) is resident in British India and is not a subsidiary of any other company resident in British India; and
- (b) during the whole or any part of any chargeable accounting period of the principal company, another company, whether or not resident or carrying on business within British India (hereinafter referred to as “the subsidiary company”) is a subsidiary of the principal company,

the following provisions of this section shall, subject to the provisions of section 5, have effect in relation to that chargeable accounting period.

(3) If the subsidiary company is a subsidiary of the principal company throughout the chargeable accounting period, such capital employed in, and profits or losses arising from, the business of the subsidiary company as is employed or arise in—

(i) the chargeable accounting period; or

(ii) any year constituting or comprised in the standard period of the principal company,

shall be treated for the purposes of this Act as if it or they were capital employed in, or as the case may be, profits or losses arising from, the business of the principal company.

(4) If the subsidiary company is a subsidiary of the principal company during part only of the chargeable accounting period, the excess or deficiency of profits of the subsidiary company for that part of that period shall be treated as increasing or as the case may be, decreasing the excess or deficiency of profits of the principal company for the whole period and shall not be deemed to be an excess or deficiency of profits of the subsidiary company.

In this sub-section, the expressions “excess” and “deficiency” mean, in relation to profits, an excess or deficiency in relation to the standard profits of the subsidiary company or, as the case may be, the principal company.

(5) In any case to which sub-section (3) or sub-section (4) applies, such alteration, if any, of the periods which would otherwise be the chargeable accounting periods of the subsidiary company shall be made as the Central Board of Revenue may direct.

(6) For the purposes of this section, a company shall be deemed to be a subsidiary of another company if and so long as not less than nine-tenths of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies.

(7) The amount of ordinary share capital of one company owned by a second company through another company or other companies, or partly directly and partly through another company or other companies shall be determined in accordance with the provisions of the Third Schedule.

(8) In this section and the Third Schedule references to ownership shall be construed as references to beneficial ownership, and the expression "ordinary share capital", in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders whereof have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.

(9) The principal company shall be entitled to allocate to its subsidiary company or companies the respective proportionate shares of the excess profits tax payable by the whole group.

(10) The excess profits tax payable by virtue of this section by the principal company in respect of the profits of any subsidiary company shall, for the purposes of section 12, be deemed to have been paid by the subsidiary company and not by the principal company.

10. (1) A person shall not for the purpose of reducing any excess profits which are or would be chargeable to excess profits tax enter into a fictitious or artificial transaction, or carry out any fictitious or artificial operation. Artificial transactions.

*Explanation.*—For the purposes of this section an artificial transaction or operation includes every device of whatever nature adopted for the purpose of presenting the accounts of a business in a misleading form or manner with intent to evade or having the effect of evading any obligation imposed by this Act.

(2) Any such transaction or operation shall be treated as null and void for the purpose of computing the excess profits tax payable under this Act.

(3) If the Excess Profits Tax Officer is satisfied that any person has acted in contravention of the provisions of sub-section (1), he may with the previous approval of the Inspecting Assistant Commissioner direct that such person shall pay, in addition to any excess profits tax for which he is or would, but for such transaction or operation, be liable, a penalty not exceeding the tax evaded or sought to be evaded.

Relief in  
respect of  
double excess  
profits taxa-  
tion.

11. (1) The Central Government may by notification in the official Gazette make provision for the granting of relief in cases where both excess profits tax under this Act and excess profits tax under any law in force in the United Kingdom, in any Indian State, or in any other part of His Majesty's Dominions have been paid upon the profits of any business if it appears to the Central Government that the laws of the United Kingdom or of that Indian State or of that other part of His Majesty's Dominions provide for corresponding relief in respect of excess profits tax charged on profits both in the United Kingdom or in that State or in that part and in British India:

Provided that where under section 19 of the Finance (No. 2) Act, 1939, national defence contri-  
bution has been paid in the United Kingdom in lieu of excess profits tax, that portion of the national defence contribution so paid which is equal to the excess profits tax which would otherwise have been payable shall, for the purposes of this sub-section, be deemed to be excess profits tax paid in the United Kingdom.

2 & 3 Geo. 6,  
ch. 108.

(2) If any person, who has paid excess profits tax under this Act for any chargeable accounting period in respect of profits arising outside India in a country the laws of which do not provide for any relief in respect of excess profits tax charged in British India, proves that he has paid excess profits tax under the laws of the said country in respect of the same profits, he shall be entitled to the deduction from the excess profits tax payable in British India of a sum equal to one-half thereof or to one-half of the excess profits tax payable in the said country, whichever is the less.

Allowance of  
excess profits  
tax in comput-  
ing income for  
income-tax  
purposes.

12. (1) The amount of the excess profits tax payable in respect of a business for any chargeable accounting period diminished by any amount allowable by way of relief under the provisions of section

11, shall, in computing for the purposes of income-tax or super-tax the profits and gains of that business, be allowed to be deducted as an expense incurred in that period.

(2) There shall also be so deducted the amount of any excess profits tax payable under any law in force in a country outside British India on the profits of the business in respect of any chargeable accounting period <sup>1</sup>[to the extent to which such profits are liable to excess profits tax under this Act] after diminishing such amount by any amount which is allowable by way of relief by repayment, set off or otherwise under any law in the country where the tax is payable providing for the granting of relief in that country where excess profits tax has also been charged in British India :

Provided that where, under the provisions of this Act relating to deficiencies of profits or under any corresponding law in force in the said country without British India, relief is given by way of repayment from excess profits tax chargeable for any chargeable accounting period previous to that in which the deficiency occurs, the amount of the deduction allowed under sub-section (1) or sub-section (2) shall not be altered, but the amount repayable shall be taken into account in computing the profits and gains of the business for the purposes of income-tax as if it were a profit of the business accruing in the <sup>2</sup>[previous year (as determined for that business for the purposes of the Indian Income-tax Act, 1922)], in which the deficiency of profits occurs.

13. (1) The Excess Profits Tax Officer may, for the purposes of this Act, require any person whom he believes to be engaged in any business to which this Act applies, or to have been so engaged during any chargeable accounting period, or to be otherwise liable to pay excess profits tax, to furnish within such period, not being less than sixty days from the date of the service of the notice, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) with respect to any chargeable accounting period specified in the notice the profits of the business

Issue of notice  
for assessment.

<sup>1</sup> Subs. for "to the extent that such profits arose in the said country" by s. 6 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

<sup>2</sup> Subs. "for chargeable accounting period". *ibid.* (with effect from 13th April, 1940).

and the standard profits of the business as computed in accordance with the provisions of section 6 or the amount of deficiency available for relief under section 7:

Provided that the Excess Profits Tax Officer may, in his discretion, extend the date for the delivery of the return.

(2) The Excess Profits Tax Officer may serve on any person, upon whom a notice has been served under sub-section (1), a notice requiring him on a date to be therein specified to produce, or cause to be produced, such accounts or document as the Excess Profits Tax Officer may require and may from time to time serve further notices in like manner requiring the production of such further accounts or documents or other evidence as he may require:

Provided that the Excess Profits Tax Officer shall not require the production of any accounts relating to a period prior to the "previous year" as determined under section 2 of the Indian Income-tax Act, 1922, XI of 1922. for the purpose of the income-tax assessment for the year ending on the 31st day of March, 1937.

#### **Assessments.**

14. (1) The Excess Profits Tax Officer shall, by an order in writing after considering such evidence, if any, as he has required under section 13, assess to the best of his judgment the profits liable to excess profits tax and the amount of excess profits tax payable on the basis of such assessment, or if there is a deficiency of profits, the amount of that deficiency and the amount of excess profits tax, if any, repayable and shall furnish a copy of such order to the person on whom the assessment has been made.

(2) Excess profits tax payable in respect of any chargeable accounting period shall be payable by the person carrying on the business in that period.

(3) Where two or more persons were carrying on the business jointly in the chargeable accounting period, the assessment shall be made upon them jointly and, in the case of a partnership, may be made in the partnership name.

(4) Where by virtue of the foregoing provisions an assessment could, but for his death, have been made on any person either solely or jointly with any other person or persons, the assessment may be made on his legal representative either solely or jointly with that other person or persons, as the case may be.

15. If, in consequence of definite information which has come into his possession, the Excess Profits Tax Officer discovers that profits of any chargeable accounting period chargeable to excess profits tax have escaped assessment, or have been under-assessed, or have been the subject of excessive relief, he may at any time within five years of the end of the chargeable accounting period in question serve on the person liable to such tax a notice containing all or any of the requirements which may be included in a notice under section 13, and may proceed to assess or re-assess the amount of such profits liable to excess profits tax and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under that section. Profits escaping assessment..

16. If the Excess Profits Tax Officer, the Appellate Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that any person has, without reasonable cause, failed to furnish the return required under sub-section (1) of section 13, or to produce or cause to be produced the accounts or documents or other evidence required by the Excess Profits Tax Officer under sub-section (2) of that section, or has concealed particulars of the profits made by or capital employed in the business, or has deliberately furnished inaccurate particulars of such profits or capital, he may direct that such person shall pay by way of penalty, in addition to the amount of any excess profits tax payable, a sum not exceeding— Penalties.

- (a) where the person has failed to furnish the return required under sub-section (1) of section 13, the amount of the excess profits tax payable; and
- (b) in any other case, the amount of excess profits tax which would have been avoided if the return made had been accepted as correct:

Provided that the Excess Profits Tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner.

17. (1) Any person aggrieved by a decision made in pursuance of section 8, or objecting to the amount of excess profits tax for which he is liable as assessed by the Excess Profits Tax Officer or denying his liability to be assessed under this Act, or objecting to any Appeals—

penalty imposed by the Excess Profits Tax Officer, or to the amount of any deficiency of profits as assessed by the Excess Profits Tax Officer, or to the amount allowed by the Excess Profits Tax Officer, by way of relief under any provision of this Act or to any refusal by the Excess Profits Tax Officer to grant relief may appeal to the Appellate Assistant Commissioner :

Provided that no appeal shall lie against a determination of the amount of the profits of any standard period where those profits have been determined in accordance with the <sup>1</sup>[second proviso] to rule 1 of the First Schedule except in respect of adjustments made under the provisions of that Schedule :

<sup>2</sup>[Provided further that no appeal shall lie under this section against any apportionment made by the Excess Profits Tax Officer under the proviso to sub-section (5) of section 8, against any <sup>3</sup>[refusal to make modifications or against any modifications] made by the Excess Profits Tax Officer under sub-section (8) of section 8, against any decision of the Excess Profits Tax Officer under rule 11 of the First Schedule, or against any decision of the Board of Referees or the Central Board of Revenue.]

(2) An appeal shall ordinarily be presented within fortyfive days of receipt of the notice of demand relating to the assessment or penalty objected to, or in the case of an appeal against the assessment of a deficiency of profits, within fortyfive days of the receipt of the copy of the order determining the deficiency, or in the case of an appeal against the amount of a relief granted or a refusal to grant relief, within fortyfive days of the receipt of the intimation of the order granting or refusing to grant the relief, but the Appellate Assistant Commissioner may admit an appeal after the expiration of that period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(3) An appeal shall be in the prescribed form and shall be verified in the prescribed manner.

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<sup>1</sup> Subs. for "first proviso" by s. 5 of the Excess Profits Tax (Amendment) Act, 1941 (11 of 1941).

<sup>2</sup> Subs. 'for the original proviso' by s. 7 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

<sup>3</sup> Subs. for "modifications" by s. 5 of the Excess Profits Tax (Amendment) Act, 1941 (11 of 1941).

(4) The Appellate Assistant Commissioner shall hear and determine the appeal and, subject to the provisions of this Act, shall pass such orders as he thinks fit, and such orders may include an order enhancing the assessment or a penalty:

Provided that an order enhancing an assessment or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(5) The procedure to be adopted in the hearing and determination of appeals shall be in accordance with the rules made in this behalf by the Central Board of Revenue.

18. (1) Any person objecting to an order passed by an Appellate Assistant Commissioner imposing on him a penalty under section 16 or enhancing his assessment or enhancing a penalty under section 17 may appeal to the Commissioner within thirty days of the date on which he was served with notice of such order.

Appeal to Commissioner against Appellate Assistant Commissioner's orders imposing penalties or enhancing assessments.

(2) In disposing of the appeal the Commissioner may, after giving the appellant an opportunity of being heard, pass such orders thereon as he thinks fit.

VII of 1939.

(3) On the coming into operation of Part II of the Indian Income-tax (Amendment) Act, 1939, this section shall cease to have effect.

19. <sup>2</sup>(1) The Commissioner may of his own motion call for the record of any proceeding under this Act which has been taken by any Excess Profits Tax Officer or Appellate Assistant Commissioner subordinate to him, and on receipt of the record may make such enquiry, or cause such enquiry to be made, and, subject to the provisions of this Act, may pass such orders thereon (including an order enhancing an assessment) as he thinks fit:

Power of revision.

Provided that he shall not pass any order prejudicial to a person to whose business this Act applies without hearing him, or giving him a reasonable opportunity of being heard.

VII of 1939.

(2) On the coming into operation of Part II of the Indian Income-tax (Amendment) Act, 1939, sub-section (1) shall cease to have effect, but there-

<sup>1</sup> This section ceased to have effect as from the 25th January, 1941 by virtue of sub-section (3) of this section.

<sup>2</sup> Sub-section (1) ceased to have effect from the 25th January, 1941 by virtue of sub-section (2) of this section.



after any Excess Profits Tax Officer or any person in respect of whose business an order under section 14 has been passed who objects to an order passed by an Appellate Assistant Commissioner under section 16 or section 17 may, within the prescribed time and in the prescribed manner, appeal against such order to the Appellate Tribunal constituted under the Indian Income-tax Act, 1922, and that Tribunal shall have all such powers in disposing of the appeal as it has in respect of appeals preferred to it under the Indian Income-tax Act, 1922. XI of 1922.

Rectification of mistakes.

20. The Commissioner may, at any time within four years from the date of any order passed whether by himself or by any Appellate Assistant Commissioner or Excess Profits Tax Officer under this Act, rectify any mistake in any evidence recorded during assessment or appellate proceedings, or any mistake apparent from the record and shall within the like period rectify any mistake apparent from the record which has been brought to his notice by a person to whose business this Act applies:

Provided that no such rectification shall be made having the effect of enhancing the liability of any person unless that person has been given a reasonable opportunity of being heard.

Application of provisions of Act XI of 1922.

21. The provisions of sections 4A, 4B, 10, 13, 24B, 29, 36 to 44C (inclusive), 45 to 48 (inclusive), 49E, 49F, 50, 54, 61 to 63 (inclusive), 65 to 67A (inclusive) of the Indian Income-tax Act, 1922, shall apply with such modifications, if any, as may be prescribed as if the said provisions were provisions of this Act and referred to excess profits tax instead of to income-tax, and every officer exercising powers under the said provisions in regard to income-tax may exercise the like powers under this Act in regard to excess profits tax in respect of cases assigned to him under sub-section (3) of section 3 as he exercises in relation to income-tax under the said Act: XI of 1922.

Provided that references in the said provisions to the assessee shall be construed as references to a person to whose business this Act applies.

Income-tax papers to be available for the purposes of this Act.

22. (1) Notwithstanding anything contained in the Indian Income-tax Act, 1922, all information contained in any statement or return made or furnished under the provisions of that Act or obtained or collected for the purposes of that Act, may be used for the purposes of this Act. XI of 1922.

(2) All information contained in any statement or return made or furnished under the provisions of this Act or obtained or collected for the purposes of this Act may be used for the purposes of the Indian  
 XI of 1922. Income-tax Act, 1922.

23. If any person fails, without reasonable cause Failure to deliver returns or statements. or excuse, to furnish in due time any return or statement, or to produce or cause to be produced, any accounts or documents required to be produced under section 13, he shall on conviction by a Magistrate be punishable with fine which may extend to five hundred rupees, and with a further fine which may extend to fifty rupees for every day during which the default continues.

24. If a person makes in any return required under section 13, any statement which is false, and False statement and declaration. which he either knows or believes to be false or does not believe to be true, he shall be punishable on conviction by a Magistrate with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

25. (1) A person shall not be proceeded against Institution of proceedings and composition of offences. for an offence under section 23 or section 24 except at the instance of the Inspecting Assistant Commissioner.

(2) No prosecution for an offence punishable under  
 XLV of 1860. section 23 or section 24 or under the Indian Penal Code shall be instituted in respect of the same facts as those in respect of which a penalty has been imposed under this Act.

(3) The Inspecting Assistant Commissioner may, either before or after the institution of proceedings, compound any offence punishable under section 23 or section 24.

26. (1) If <sup>1</sup>[on an application made to it through the Excess Profits Tax Officer] the Central Board of Revenue is satisfied in the case of any business that Power of Central Board of Revenue to grant relief in special cases. special circumstances exist which render it inequitable that the standard profits of the business in relation to any chargeable accounting period should be computed in accordance with the provisions of subsection (1) of section 6, and that no relief or insufficient relief has been granted under the provisions of

<sup>1</sup> Ins. by s. 8 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

sub-section (3) of that section, the Central Board of Revenue may direct that the standard profits of the business shall be computed to be such greater amount as the Central Board of Revenue thinks just:

Provided that such amount shall not exceed the statutory percentage of the average amount of the capital employed in the business unless the Central Board of Revenue is satisfied that owing to some specific cause peculiar to the business it is just that a greater amount should be allowed and that the relief, if any, afforded by the Board of Referees under sub-section (3) of section 6 is inadequate.

<sup>1</sup>[Provided further that a determination on an application under this sub-section—

- (a) shall have effect with respect to all subsequent chargeable accounting periods;
- (b) shall exclude any further application under this sub-section.];

(2) Without prejudice to the generality of the provisions of sub-section (1) the Central Board of Revenue shall, in considering the making of a direction under that sub-section, have regard to the following circumstances, namely:—

- (a) that the capital employed in a business commenced on or after the 1st day of July, 1938, is so small in relation to the volume of the activities of the business that to compute the standard profits in accordance with the provisions of section 6 would be inequitable, taking into account the normal profits made in similar businesses;
- (b) that owing to the nature of the business heavy expenditure by way of preliminary expenses or expenses in connection with experimental or development work has been incurred in accounting periods closely preceding the chargeable accounting period and that during the chargeable accounting period such expenditure would normally fall to be written off wholly or partly in the books of the person chargeable to excess profits tax;
- (c) that the business is of a pioneer nature, that is to say, is concerned with an industrial

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<sup>1</sup> Added by s. 8 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

process or a form of manufacture or production not undertaken in British India before the 1st day of April, 1932, and has not been in existence long enough to have paid income-tax for the previous year as determined for the purpose of the income-tax assessment for the year beginning on the 1st day of April, 1937.

(3) If <sup>1</sup>[on an application made to it through the Excess Profits Tax Officer] the Central Board of Revenue is satisfied that the computation in accordance with the provisions of Schedule I of the profits of a business during any chargeable accounting period would be inequitable, owing to any of the following circumstances, namely:—

- (a) any postponement or suspension, as a consequence of the present hostilities, of renewals or repairs, or
- (b) the provision of buildings, plant or machinery which will not be required for the purposes of the business after the termination of the present hostilities, or
- (c) difficulties in bringing into British India income arising outside British India where the country in which the income accrued prohibits or restricts by its laws the remittance of money to British India, and loss in the remittance to British India of such income because of fluctuations in the rate of exchange between that country and British India;

the Central Board of Revenue may direct that such allowances shall be made in computing the profits of the business during that chargeable accounting period as the Central Board of Revenue thinks just:

Provided that in making such direction the Central Board of Revenue may impose such conditions as it deems appropriate.

<sup>2</sup>[(4) An application to the Central Board of Revenue under this section shall be presented to the Excess Profits Tax Officer before the expiry of the period specified in the notice issued under sub-section (1) of section 13 or of the extended period allowed by the Excess Profits Tax Officer under the proviso to

<sup>1</sup> Ins. by s. 8 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

<sup>2</sup> Added, *ibid* (with effect from the 13th April, 1940).

that sub-section, but in the case of an application under sub-section (1) of this section, if the person carrying on the business has made or is making an application under sub-section (3) of section 6 the application shall be presented to the Excess Profits Tax Officer before the expiry of forty-five days from the date on which the order of the Board of Referees disposing of the application under sub-section (3) of section 6 is communicated to the person who has made that application.]

Power to make  
rules.

27. (1) The Central Board of Revenue may, subject to the control of the Central Government, make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe the procedure to be followed on appeals, applications for rectification of mistakes, and applications for refunds;
- (b) provide for the adaptation to excess profits tax of any of the provisions of the Indian Income-tax Act, 1922, which are made XI of 1922. applicable to excess profits tax by section 21; or of any rules made under any such provision;
- (c) provide in regard to companies whose business consists wholly or mainly in the dealing in or holding of investments, for the granting of exemption or relief from liability to excess profits tax of profits derived from investments in other companies the profits of which have been subjected to excess profits tax in British India;
- (d) provide for any matter which by or under this Act is to be prescribed.

(3) The power to make rules conferred by this section shall be exercised in like manner as the power to make rules under section 59 of the Indian Income-tax Act, 1922.

XI of 1922.

### SCHEDULE I.

[See section 2 (19).] -

*Rules for the computation of profits for purposes of  
Excess Profits Tax.*

1. The profits of a business during the standard period, or during any chargeable accounting period.

shall be separately computed, and shall, subject to the provisions of this Schedule, be computed on the principles on which the profits of a business are computed for the purposes of income-tax under section 10 of the Indian Income-tax Act, 1922:

<sup>1</sup>[Provided that any sums <sup>2</sup>[(other than any interest paid by a firm to a partner of the firm)] excluded under the proviso to clause (iii) of sub-section (2) or clause (a) of sub-section (4) of that section from the allowances made in computing the profits of the business for the purposes of income-tax shall, if paid, be included in those allowances when computing the profits of the business for the purposes of excess profits tax:];

Provided <sup>1</sup>[further] that where the profits during any standard period have already been determined for the purpose of an assessment under the Indian Income-tax Act, 1922, such profits as so determined shall, subject to the adjustments required by this Schedule, be taken as the profits during that period for the purpose of excess profits tax:

Provided further that where a standard period or chargeable accounting period is not an accounting period, the profits or losses of the business during any accounting periods wholly or partly included within the standard period or chargeable accounting period shall be so computed as aforesaid, and such division and apportionment to specific periods of those profits or losses and such aggregation of those profits and losses, or any apportioned part thereof shall be made as appears necessary to arrive at the profit during the standard period or chargeable accounting period: and any such apportionment shall be made in proportion to the number of months or fractions of months in the respective periods unless the Excess Profits Tax Officer, having regard to any special circumstances, otherwise directs.

2. The profits of a business during the standard period shall be computed on the same basis and in the same manner as the profits of that business are under the Indian Income-tax Act, 1922, as amended by the Indian Income-tax (Amendment) Act, 1939,

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<sup>1</sup> Ins. by s. 9 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

<sup>2</sup> Ins. by s. 6 of the Excess Profits Tax (Amendment) Act, 1941 (11 of 1941) (with retrospective effect).

computed for the chargeable accounting period, notwithstanding that the Indian Income-tax (Amendment) Act, 1939 may not have been in force in the standard period.

3. (1) The principle of adding the allowance for depreciation for any one period to the allowance for depreciation for any subsequent period and deeming it to be part of the allowance for such subsequent period shall not be followed.

(2) No allowance shall be made for any loss other than a loss sustained in a business to which this Act applies.

(3) Nothing in this Act shall be construed as permitting the application, in computing profits for the purposes of the excess profits tax, of the provisions of sub-section (2) of section 24 of the Indian Income-tax Act, 1922.

4. (1) Income received from investments shall be included in the profits in the cases and to the extent provided in sub-rules (2), <sup>1</sup>[(2A)] and (4) of this rule and not otherwise.

(2) In the case of the business of a building society, or of a moneylending business, banking business, insurance business or business consisting wholly or mainly in the dealing in or holding of investments, the profits shall include all income received from investments, whether or not such income is included in the profits charged under section 10 of the Indian Income-tax Act, 1922, or is charged under any other section of that Act, or has been subjected to deduction of tax at source or is free of or exempt from income-tax.

<sup>1</sup>[(2A) In the case of a business part of which consists in banking, insurance or dealing in investments, not being a business to which sub-rule (2) of this rule applies, the profits shall include all income received from investments held for the purposes of that part of the business, being income to which the persons carrying on the business are beneficially entitled.]

(3) Notwithstanding anything contained in sub-rule (2) <sup>1</sup>[or (2A)], where the profits of a subsidiary company are under the provisions of section 9 to be included in the profits of the principal company for

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<sup>1</sup> Ins. by s. 9 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April 1940).

the purposes of assessment to excess profits tax, dividends from the subsidiary company out of such profits shall not also be included in the profits of the principal company.

(4) In the case of a business which consists wholly or partly in the letting out of property on hire, the income from the property shall be included in the profits of the business whether or not it has been charged to income-tax under section 9 of the Indian Income-tax Act, 1922, or under any other section of that Act.

(5) Where the person carrying on a business is the beneficial owner of any investments, the income from which is by virtue of the provisions of this rule not to be taken into account in computing the profits of the business, and a deduction would, apart from the provisions of this rule, fall to be made in respect of interest on borrowed money, the deduction (if any) to be made in respect of that interest shall be computed as if the principal of the borrowed money were reduced by the value of those investments :

Provided that where the person carrying on the business is not a company, no such reduction shall be deemed to be made in the principal of any borrowed money in respect of any investments unless the investments are mortgaged, charged or pledged as security for the repayment of that money and interest thereon.

5. If at any time after the close of the standard period any increase in the capital employed in a business has been effected by means of a loan from a bank carrying on a *bona fide* banking business, or by means of a public issue of debentures secured on the property of the company, the interest on so much of the loan or debentures as has been utilised in effecting the increase in the capital shall not be deducted in computing the profits for the purposes of excess profits tax and, notwithstanding the provisions of rule 2 of Schedule II, that amount of such loan or debentures shall not be deducted in arriving at the amount of the capital employed in the business.

6. No deduction shall be made on account of liability to pay, or payment of, income-tax super-tax, or excess profits tax.



7. <sup>1</sup>[(1) In the case of a business carried on, in any accounting period which constitutes or includes a chargeable accounting period, by a company the directors whereof have throughout that accounting period a controlling interest therein—

(a) in computing the profits for that accounting period; and

(b) if the standard profits of the business are computed by reference to the profits of a standard period, also in computing, in relation to any such chargeable accounting period, the profits for the standard period, no deduction shall be made in respect of directors' remuneration.] :

(2) <sup>2</sup>[In sub-rule (1) of this rule] the expression "directors' remuneration" does not include—

(a) the remuneration of any director who is required to devote substantially the whole of his time to the service of the company in a managerial or technical capacity and is not the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect means, to control, more than five per cent. of the ordinary share capital of the company, or

(b) the remuneration of any managing agent where such remuneration is included in the profits of the managing agent's business for the purposes of excess profits tax.

<sup>3</sup>[(3) If in the case of a business carried on by a company in any accounting period which constitutes or includes a chargeable accounting period, the directors of the company—

(a) have during any part of that accounting period, or

(b) had during the whole or any part of any previous accounting period which includes the whole or any part of any chargeable accounting period or the whole or any part of the standard period (if any),

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<sup>1</sup> Subs. for the original sub-section by s. 9 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from the 13th April, 1940).

<sup>2</sup> Subs. for "In this rule", *ibid* (with effect from the 13th April, 1940).

<sup>3</sup> Added by s. 9, *ibid* (with effect from 13th April, 1940).

a controlling interest therein, and the case is not one to which sub-rule (1) of this rule applies, then, except in so far as the Central Board of Revenue otherwise directs, no deduction shall be made in respect of directors' remuneration either in computing the profits for the first-mentioned accounting period or in computing in relation to any chargeable accounting period wholly or partly included in that accounting period. the profits of the standard period (if any).]:

8. In the case of a business carried on by a company, if the standard profits of the company are computed by reference to the profits during a standard period, no deduction shall be allowed in respect of remuneration paid to a managing agent in excess of the amount which would have been payable to that managing agent if the agreement in force in the standard period had been in force in the chargeable accounting period, except where such remuneration is subjected to excess profits tax in the hands of the managing agent.

9. Where the performance of a contract extends beyond the accounting period, there shall (unless the Excess Profits Tax Officer, owing to any special circumstances, otherwise directs) be attributed to the accounting period such proportion of the entire profits or loss which has resulted, or which it is estimated will result, from the complete performance of the contract as is properly attributable to the accounting period, having regard to the extent to which the contract was performed therein:

Provided that when any such contract has been completed and the profits have been finally ascertained, if the aggregate of the amounts attributed to previous accounting periods exceeds the profit, as finally ascertained, from the complete performance of the contract, an adjustment shall be made to reduce the amounts so attributed to the various chargeable accounting periods to the amount of the profits as finally ascertained.

10. In respect of any building erected on or after the 1st day of September, 1939, which during any chargeable accounting period has ceased to be required for the purposes of the business or has been

sold, any amount by which the value of the building at the date when it ceased to be required for the purposes of the business or the price obtained for the building, as the case may be, falls short of the written down value of the building shall be allowed as a deduction in arriving at the profits of that chargeable accounting period.

<sup>1</sup>[11. Where in respect of any accounting period a deduction would, apart from the provisions of this rule, be allowable in computing profits, and, in the opinion of the Excess Profits Tax Officer, the deduction does not represent a sum reasonably and properly attributable to that accounting period, only such part of the deduction shall be allowable as a deduction for that period as appears to the Excess Profits Tax Officer to be reasonably and properly attributable to that period, and any balance of the deduction shall be treated as attributable to such other accounting period or periods (whether or not they include, or fall wholly or partly within, the standard period, if any, or any chargeable accounting period) as the Excess Profits Tax Officer thinks proper.

Any person who is dissatisfied with a determination of the Excess Profits Tax Officer under this rule may, at any time before the expiry of forty-five days from the date on which such determination is communicated to him, appeal to the Board of Referees through the Excess Profits Tax Officer.]

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## SCHEDULE II.

[See section 2 (3).]

*Rules for computing the average amount of capital.*

1. (1) Subject to the provisions of this Schedule the average amount of the capital employed in a business (so far as it does not consist of money) shall be taken to be—

- (a) so far as it consists of assets acquired by purchase on or after the commencement of the business, the price at which those assets were acquired, subject to the deductions hereafter specified ;

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<sup>1</sup> Added by s. 9 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

- (b) so far as it consists of assets being debts due to the person carrying on the business, the nominal amount of those debts, subject to the said deductions;
- (c) so far as it consists of any other assets which have been acquired otherwise than by purchase as aforesaid, the value of the assets when they became assets of the business, subject to the said deductions.

(2) The price or value of any assets other than a debt shall be subject to such deductions for depreciation as are necessary to reduce the asset to its written down value <sup>1</sup>[and to such other deductions in respect of reduced values of assets as are allowable in computing profits for the purposes of income-tax], and in the case of a debt, the nominal amount of the debt shall be subject to any deduction which has been allowed in respect thereof for income-tax purposes.

(3) Where the price of any asset has been satisfied otherwise than in cash, the then value of the consideration actually given for the asset shall be treated as the price at which the asset was acquired.

2. (1) Any borrowed money and debts shall be deducted, and in particular any debt for income-tax or super-tax or for excess profits tax in respect of the business shall be deducted:

Provided that any such debt for income-tax or super-tax or excess profits tax shall, for the purposes of this Schedule, be deemed to have become due—

- (a) in the case of income-tax and super-tax, on the last day of the period of time within which the tax is payable under section 45 of the Indian Income-tax Act, 1922;
- (b) in the case of excess profits tax, on the first day after the end of the chargeable accounting period in respect of which the tax is assessable notwithstanding that the excess profits tax may not have been assessed until after that date.

<sup>1</sup>[The debts to be deducted under this sub-rule shall include any such sums in respect of accruing

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<sup>1</sup> Ins. by s. 10 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

liabilities as are allowable as a deduction in computing profits for the purposes of excess profits tax or would have been so allowable if the period for which the amount of capital is being computed had been a chargeable accounting period; and the said sums shall be deducted notwithstanding that they have not become payable.].

(2) Where any debt for the excess profits tax assessable in respect of any period is to be deducted under this rule, the amount thereof shall not be reduced as the result of any relief to be given in respect of a deficiency of profits occurring in any subsequent period, and the amount of any such relief shall be treated as having become an asset of the business on the first day after the end of the chargeable accounting period in which the deficiency occurred.

3. Any investments the income from which is by virtue of the provisions of the First Schedule not to be taken into account in computing the profits of the business, and any moneys not required for the purposes of the business, shall be left out of account, but where any investments in the beneficial ownership of the person carrying on the business are so left out of account, the sum (if any) to be deducted under the last preceding rule in respect of borrowed money shall be computed as if the principal of the borrowed money were reduced by the value of those investments :

Provided that where the person carrying on the business is not a company, no reduction shall be deemed to be made in the principal of any borrowed money in respect of any investments unless the investments are mortgaged, charged or pledged as security for the repayment of that money and the interest thereon.

4. Notwithstanding anything contained in rule 3, in the case of the business of shipping, to which this Act applies, the sale proceeds of any tonnage sold or the amount of compensation in respect of loss of ships or the amount of accumulation of reserves, whether invested or not, shall be taken into account in computing the average amount of capital employed in such business :

Provided that any income received from investment of such funds shall be included in computing profits for purposes of the excess profits tax.

5. For the purpose of ascertaining the average amount of capital employed in a business during any period, the profits or losses made in that period shall except so far as the contrary is shown, be deemed—

- (a) to have accrued at an even rate throughout the period; and
- (b) to have resulted, as they accrued, in a corresponding increase or decrease, as the case may be, in the capital employed in the business.

6. Where, in accordance with the second proviso to section 5 of this Act, this Act is applicable to part only of a business, the capital employed in that part shall be computed separately from any other capital of the person carrying on the business, and all references to capital employed in a business shall be construed as references to capital employed in that part of the business only.

<sup>1</sup>[7. (1) If—

- (a) the Central Board of Revenue is satisfied, as respects any assets of any business the standard profits of which are computed by reference to the profits of a standard period, that during that period or any part thereof those assets were inherently unproductive, and
- (b) an application that this rule shall have effect is made through the Excess Profits Tax Officer to the Central Board of Revenue by the person carrying on the business,

then, in computing the average amount of the capital employed in the business in the standard period and in all chargeable accounting periods, those assets, and any other assets of the business, shall be treated as not having been assets thereof during any part of the period during which, in the opinion of the Central Board of Revenue, they were inherently unproductive :

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<sup>1</sup> Added by s. 10 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

Provided that in the case of a business the standard profits of which depend directly or indirectly upon a direction of the Board of Referees under sub-section (3) of section 6, or of the Central Board of Revenue under sub-section (1) of section 26 of this Act the provisions of this rule shall have effect to such extent only as the Central Board of Revenue thinks proper.

Provided further that an application to the Central Board of Revenue under this rule shall be presented to the Excess Profits Tax Officer before the expiry of the period specified in the notice issued under sub-section (1) of section 13 of this Act or of the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section.

(2) Where sub-rule (1) of this rule has effect on the application of the person carrying on any business, any computation of capital of the business made before the making of the application, and any assessment affected by that computation shall be revised accordingly.]

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### SCHEDULE III.

[See section 9 (7).]

*Rules for determining the amount of capital held by a company through other companies.*

1. Where, in the case of a number of companies, the first directly owns ordinary share capital of the second and the second directly owns ordinary share capital of the third, then, for the purposes of this Schedule, the first shall be deemed to own ordinary share capital of the third through the second and, if the third directly owns ordinary share capital of a fourth, the first shall be deemed to own ordinary share capital of the fourth through the second and third, and the second shall be deemed to own ordinary share capital of the fourth through the third, and so on.

## 2. In this Schedule—

- (a) any number of companies of which the first directly owns ordinary share capital of the next and the next directly owns ordinary share capital of the next but one and so on, and, if they are more than three, any three or more of them, are referred to as “a series”;
- (b) in any series—
  - (i) that company which owns ordinary share capital of another through the remainder is referred to as “the first owner”;
  - (ii) that other company the ordinary share capital of which is so owned is referred to as “the last owned company”;
  - (iii) the remainder, if one only, is referred to as an “intermediary” or, if more than one, is referred to as a “chain of intermediaries”;
- (c) a company in a series which directly owns ordinary share capital of another company in the series is referred to as an “owner”;
- (d) any two companies in a series of which one owns ordinary share capital of the other directly, and not through one or more of the other companies in the series, are referred to as being directly related to one another.

3. Where every owner in a series owns the whole of the ordinary share capital of the company to which it is directly related, the first owner shall be deemed to own through the intermediary or chain of intermediaries the whole of the ordinary share capital of the last owned company.

4. Where one of the owners in a series owns a fraction of the ordinary share capital of the company to which it is directly related, and every other owner in the series owns the whole of the ordinary share capital of the company to which it is directly related the first owner shall be deemed to own that fraction of the ordinary share capital of the last owned company through the intermediary or chain of intermediaries.



## 5. Where—

- (a) each of two or more of the owners in a series owns a fraction, and every other owner in the series owns the whole, of the ordinary share capital of the company to which it is directly related; or
- (b) every owner in a series owns a fraction of the ordinary share capital of the company to which it is directly related;

the first owner shall be deemed to own through the intermediary or chain of intermediaries such fraction of the ordinary share capital of the last owned company as results from the multiplication of those fractions.

6. Where the first owner in any series owns a fraction of the ordinary share capital of the last owned company in that series through the intermediary or chain of intermediaries in that series, and also owns another fraction or other fractions of the ordinary share capital of the last owned company, either—

- (a) directly; or
- (b) through any intermediary or intermediaries which is not a member or are not members of that series; or
- (c) through a chain or chains of intermediaries of which one or some or all are not members of that series; or
- (d) in a case where the series consists of more than three companies, through an intermediary or intermediaries which is a member or are members of the series, or through a chain or chains of intermediaries consisting of some but not all of the companies of which the chain of intermediaries in the series consists;

then, for the purpose of ascertaining the amount of the ordinary share capital of the last owned company owned by the first owner, all those fractions shall be aggregated and the first owner shall be deemed to own the sum of those fractions.

THE INDIAN FINANCE ACT, 1940.<sup>1</sup>

## ACT No. XVI OF 1940.

[6th April, 1940.]

An Act to fix the duty on salt manufactured in, or imported by land into, certain parts of British India, to vary the rate of excise duty on sugar other than *khandsari* or pa'myra sugar leviable under the Sugar (Excise Duty) Act, 1934, to vary the rate of the excise and customs duty on motor spirit leviable under the Motor Spirit (Duties) Act, 1917, and the Indian Tariff Act, 1934, to fix maximum rates of postage under the Indian Post Office Act, 1898 and to fix rates of income-tax and super-tax.

XIV of 1934.

II of 1917.

XXXII of 1934.

VI of 1898.

**W**HEREAS it is expedient to fix the duty on salt manufactured in, or imported by land into, certain parts of British India, to vary the rate of excise duty on sugar other than *khandsari* or palmyra sugar, leviable under the Sugar (Excise Duty) Act, 1934, to vary the rate of the excise duty on motor spirit leviable under the Motor Spirit (Duties) Act, 1917, to vary the rate of the customs duty on motor spirit leviable under the Indian Tariff Act, 1934, to fix maximum rates of postage under the Indian Post Office Act, 1898, and to fix rates of income-tax and super-tax;

XIV of 1934.

II of 1917.

XXXII of 1934.

VI of 1898.

<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1940, Pt. V, p. 107.

The Act has been applied to—

British Baluchistan, see Gazette of India, 1940, Pt. I, p. 496 ;

the Chittagong Hill tracts, subject to exceptions, see Notification No. 79, dated 20th May, 1940, Calcutta Gazette, dated 23rd May, 1940 ;

the Darjeeling district and to the partially excluded areas of the Mymensingh district, by Bengal Govt. Notification No. 6037-F. B., dated 23rd July, 1940 ;

partially excluded areas of the province of Madras, see Fort St. George Gazette Notification No. 13, dated 20th January, 1941 ;

all the partially excluded areas of the province of Orissa, by Bihar Govt. Notification No. 333-F., dated 28th January, 1941 ;

the Act came into force in the Chota Nagpur Division and the Santhal Parganas district on the 6th April, 1940, see s. 3 of Bihar Regulation I of 1941.

It is hereby enacted as follows:—

Short title  
and extent.

1. (1) This Act may be called the Indian Finance Act, 1940

Fixation of  
salt duty.

(2) It extends to the whole of British India.

2. The provisions of section 7 of the Indian Salt Act, 1882, shall, in so far as they enable the Central Government to impose by rule made under that section a duty on salt manufactured in, or imported into, any part of British India, be construed as if, for the year beginning on the 1st day of April, 1940, they imposed such duty at the rate of one rupee and four annas per maund of eighty-two and two sevenths pounds avoirdupois of salt manufactured in, or imported by land into, any such part, and such duty shall, for all the purposes of the said Act, be deemed to have been imposed by rule under that section.

Excise duty  
on sugar.

\*3. For clause (ii) of sub-section (2) of section 3 of the Sugar Excise Duty Act, 1934, the following shall be substituted, namely:—

“(ii) on all other sugar except palmyra sugar at the rate—

(a) of two rupees per cwt. in the case of sugar produced on or before the 29th day of February, 1940, and either issued out of a factory on or after that date or used within a factory on or after that date in the manufacture of any commodity other than sugar; and

(b) of three rupees per cwt. in the case of sugar produced on or after the 1st day of March, 1940”.

Excise duty  
on motor  
spirit.

\*4. In sub-section (1) of section 3 of the Motor Spirit (Duties) Act, 1917, for the words “eight annas” the words “twelve annas” shall be substituted, and the provisions of section 5 of the Indian Finance (Supplementary and Extending) Act, 1931, so far as they relate to the levy of an additional duty on motor spirit shall cease to have effect.

Import duty  
on motor  
spirit.

\*5. In the First Schedule to the Indian Tariff Act, 1934, in Item No. 27 (6), for the words “Ten annas per Imperial gallon” in the fourth column, the following words shall be substituted, namely:—

“The rate at which excise duty is for the time being leviable on motor spirit”.

\*This section came into effect on the 1st March, 1940, by virtue of a declaration inserted in the Bill stage of the Act under the Provisional Collection of Taxes Act, 1931 (XVI of 1931).

6. For the year beginning on the 1st day of April, 1940, the Schedule contained in Schedule I to this Act shall be inserted in the Indian Post Office Act, 1898, as the First Schedule to that Act.

VI of 1898.

7. (1) Subject to the provisions of sub-section (2)— Income-tax and super-tax.

(a) income-tax for the year beginning on the 1st day of April, 1940, shall be charged at the rates specified in Part I of Schedule II to the Indian Finance Act, 1939;

XI of 1922.

(b) rates of super-tax for the year beginning on the 1st day of April, 1940, shall, for the purposes of section 55 of the Indian Income-tax Act, 1922, be the rates specified in Part II of Schedule II to the Indian Finance Act, 1939:

II of 1912.

Provided that in the case of an association of persons being a Co-operative Society, other than the Sanikatta Saltowners' Society in the Bombay Presidency, for the time being registered under the Co-operative Societies Act, 1912, or under an Act of the Provincial Legislature governing the registration of Co-operative Societies, the rates of super-tax for the year beginning on the 1st day of April, 1940, shall be—

(1) On the first Rs. 25,000 of total income . . . . Nil

(2) On the balance of total income : One anna in the rupee.

XI of 1922.

(2) In cases to which section 17 of the Indian Income-tax Act, 1922, applies, the tax chargeable shall be determined in accordance with the provisions of that section with reference to the rates imposed by sub-section (1).

XI of 1922.

(3) For the purpose of this section and of the rates of tax imposed by sub-section (1), the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922.

**SCHEDULE I.**

Schedule to be inserted in the Indian Post Office Act, 1898.

[See section 6.]

**“THE FIRST SCHEDULE.****INLAND POSTAGE RATES.**

[See section 7.]

*Letters.*

For a weight not exceeding one tola . . . . .	One anna.
For every tola, or fraction thereof, exceeding one tola . . . . .	Half an anna.

*Postcards.*

Single . . . . .	Nine pies.
Reply . . . . .	One and a half annas.

*Book, Pattern and Sample Packets.*

For the first two and a half tolas or fraction thereof . . . . .	Six pies.
For every additional two and a half tolas, or fraction thereof, in excess of two and a half tolas . . . . .	Three pies.

*Registered Newspapers.*

For a weight not exceeding ten tolas . . . . .	Quarter of an anna.
For a weight exceeding ten tolas and not exceeding twenty tolas . . . . .	Half an anna.
For every twenty tolas, or fraction thereof exceeding twenty tolas . . . . .	Half an anna.
In the case of more than one copy of the same issue of a registered newspaper being carried in the same packet—	
For a weight not exceeding ten tolas . . . . .	Half an anna.
For every additional five tolas, or fraction thereof, in excess of ten tolas . . . . .	Quarter of an anna.
Provided that such packet shall not be delivered at any addressee's residence but shall be given to a recognised agent at the post office.	

*Parcel.*

For a weight not exceeding forty tolas . . . . .	Four annas.
For every forty tolas, or fraction thereof, exceeding forty tolas . . . . .	Four annas.”

THE NATIONAL SERVICE (EUROPEAN  
BRITISH SUBJECTS) ACT, 1940.

ACT No. XVIII OF 1940.<sup>1</sup>

[9th April, 1940.]

An Act to make certain provisions relating to service by European British subjects<sup>2</sup>[in the armed forces of the Crown and in civilian employment]

WHEREAS it is expedient to make certain provisions relating to service by European British subjects<sup>2</sup>[in the armed forces of the Crown and in civilian employment;]

It is hereby enacted as follows:—

1. (1) This Act may be called the National Service (European British Subjects) Act, 1940. Short title, extent and commencement.

(2) It extends to the whole of British India, and applies also to European British subjects in any part of India.

(3) It shall come into force at once.

2. In this Act, unless there is anything repugnant Definitions. in the subject or context,—

(a) “competent authority” means, with reference to any person liable under this Act to be called up for<sup>3</sup>[national service], the Officer Commanding the military district, or Independent Area, or Sind Area or Delhi Area, as the case may be, in which that person is for the time being resident;

(b) “European British subject” means any subject of His Majesty of European descent in the male line born, naturalised or domiciled in the British Islands or in any Dominion as defined in the Statute of Westminster, 1931, or in any Colony except Ceylon;

(c) “prescribed” means prescribed by rules made under this Act;

22 Geo. 5, c. 4.

<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1940, Pt. V, p. 175.

This Act has been applied to—

the Darjeeling district and the partially excluded areas of the Mymensingh district with effect from 13th April, 1940, see Notification No. 108-P.D., dated 25th April, 1940, Calcutta Gazette, dated 2nd May, 1940.

<sup>2</sup>Substituted by s. 2 of the National Service (European British Subjects) Amendment Ordinance, 1940 (5 of 1940).

<sup>3</sup>Substituted by s. 3, *ibid*.

- (d) "national service" means service in the armed forces of the Crown or <sup>1</sup>[in a civilian capacity in pursuance of a notice issued under section 7.]

Liability to be called up for enquiry.

3. (1) Every male European British subject for the time being in India, not being—

- (a) a person in holy orders, or a regular minister of any religious denomination, or
- (b) a member of His Majesty's regular Naval, Military or Air Forces, or a member of any Reserve of any such force who is liable under his terms of service in such Reserve to be called up for service at any time and not only on partial or general mobilisation, or
- (c) a servant of the Crown, or
- (d) a person not included in clause (c) who is serving in the service of a federal railway or an Indian State railway or a minor railway as defined in the Government of India Act, 1935,

shall be liable under this Act to be called up for  
2 \* \* \* \* national service.

(2) A person liable to be called up for <sup>3</sup>[national service] under this Act shall remain so liable until he has completed his fiftieth year and no longer.

Calling up for enquiry.

4. (1) The competent authority may, after consultation with the National Service Advisory Committee constituted under section 5, cause to be served on any person, for the time being liable under this Act to be called up for <sup>4</sup>[national service], a written notice (hereinafter referred to in this Act as a <sup>5</sup>[preliminary notice]) stating that he is called up for enquiry into his fitness and availability for national service and requiring him to present himself to such person and at such place and at such time (not earlier than the seventh day after the date of the service of the notice) as may be specified in the notice, and to submit himself to examination by the National Service Advisory Committee constituted under section 5.

<sup>1</sup> Subs. for the original words by s. 3 of the National Service (European British Subjects) Amendment Ordinance, 1940 (5, of 1940).

<sup>2</sup> Certain words were omitted by s. 4, *ibid.*

<sup>3</sup> Subs. for "enquiry", *ibid.*

<sup>4</sup> Subs. for "enquiry" by s. 5, *ibid.*

<sup>5</sup> Subs. for "calling up notice", *ibid.*

(2) Where a notice under sub-section (1) has been duly served on any person, the competent authority may, at any time while that person remains liable under this Act to be called up for <sup>1</sup>[national service] cancel the notice and cause to be served on him a further notice varying the original notice.

(3) A <sup>2</sup>[preliminary notice] served on any person shall cease to have effect if, before the date on which he is thereby required to present himself, he ceases to be liable under this Act to be called up for <sup>1</sup>[national service].

(4) Such travelling and other allowances as may be prescribed shall be paid by the competent authority to any person required to present himself in accordance with any notice under this section.

5. (1) The Central Government shall constitute <sup>National Service Advisory Committees.</sup> for such areas and in such places as it thinks fit committees (in this Act referred to as National Service Advisory Committees) to exercise the functions assigned to such committees by this Act.

(2) Each National Service Advisory Committee shall consist of not less than four members of whom one shall be an officer of one of His Majesty's Forces in India appointed by the competent authority, and the others shall be European British subjects, not being servants of the Crown, appointed by the Central Government.

(3) The Chairman of the Committee shall be appointed by the Committee.

(4) A National Service Advisory Committee shall have power to co-opt as additional members for such time or purpose as it thinks fit any persons qualified for appointment to the Committee by the Central Government.

(5) A National Service Advisory Committee may meet at such times and places as it thinks fit and shall meet when required to do so by the Central Government or by the competent authority.

<sup>3</sup>[(6) The Chairman of the Committee and any one other member of the Committee shall constitute a quorum.]

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<sup>1</sup> Subs. for "enquiry" by s. 5 of the National Service (European British Subjects) Amendment Ordinance, 1940 (5 of 1940).

<sup>2</sup> Subs. for "calling up notice," *ibid.*

<sup>3</sup> Ins. by s. 6, *ibid.*



<sup>1</sup>[(7)] A National Service Advisory Committee shall have the powers of a Civil Court for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery of documents, and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

V of 1898.

<sup>1</sup>[(8)] A National Service Advisory Committee may order any person called up for enquiry under sub-section (1) of section 4 to submit himself to be examined by a medical officer of the armed forces, and if he questions the decision of that officer, to appear before a medical board convened under military regulations.

Functions of  
National Service  
Advisory  
Committees.

6. The following shall be the functions of National Service Advisory Committees, namely:—

(a) when consulted by the competent authority, to advise that authority on the exercise of that authority's powers under sub-section (1) of section 4;

<sup>2</sup>[(b) to examine the case of any person ordered under section 4 to present himself for enquiry, and to report to the competent authority—

(i) whether such person is fit for service in the armed forces or is fit for service in a civilian capacity only, or in both,

(ii) whether such person is or is not available for national service (*i.e.*, can be spared without detriment to the public interest from his existing employment),

(iii) where such person claims that he conscientiously objects to performing military service, whether the claim made is or is not established.]

(c) when consulted by the Central Government, to advise the Central Government on any matter arising out of this Act which the Central Government may refer or is required by this Act to refer to the Committee.

<sup>1</sup> Re-numbered by s. 6 of the National Service (European British Subjects) Amendment Ordinance, 1940 (5 of 1940).

<sup>2</sup> Subs. for the original clause (b) by s. 7, *ibid.*

<sup>1</sup>[6A. (1) If any person liable under this Act to be called up for national service claims that he conscientiously objects to performing military service, he shall, upon receipt of the preliminary notice issued under sub-section (1) of section 4 and not later than the date specified in that notice as the date on which he is to present himself for submission to examination by the National Service Advisory Committee, prefer such claim, in such form and with such particulars as may be prescribed, to the competent authority and the competent authority shall submit the claim to the National Service Advisory Committee.

(2) The National Service Advisory Committee shall record in writing a finding, with the reasons therefor, whether the claim is or is not established, and a copy of such finding shall be supplied to the claimant.

(3) If the National Service Advisory Committee finds that such claim is established the claimant shall not be liable to be called up for service in the armed forces of the Crown.

(4) Any claimant aggrieved by a finding of the National Service Advisory Committee that such claim is not established may, within seven days from the date on which he receives the copy of the finding, appeal to the Tribunal constituted under section 9, and, if that Tribunal reverses the finding of the National Service Advisory Committee, the claimant shall not be liable to be called up for service in the armed forces of the Crown.]

<sup>2</sup>[7. (1) The competent authority may cause to be served on any person, who is liable under this Act to be called up for national service and whose case has been examined and reported on by the National Service Advisory Committee, a written notice (hereinafter referred to in this Act as a calling-up notice) stating that he is called up for service in such one of His Majesty's armed forces as may be specified in the notice, or for service in such civilian capacity whether under the Crown or otherwise as may be so specified, and requiring him to present himself at such place and time (not earlier than the seventh day after the date of the service of the notice) and

<sup>1</sup> Ins. by s. 8 of the National Service (European British Subjects) Amendment Ordinance, 1940 (5 of 1940).

<sup>2</sup> New sections 7 to 7C were subs. for the original section 7 by s. 2, *ibid*.

to such authority as may be so specified; and, subject to the following provisions of this Act, the person upon whom the notice is served shall, when the notice states that he is called up for service in one of His Majesty's Forces, be deemed as from the day so specified to have been duly entered or enlisted for service in the force so specified, and, when the notice states that he is called up for service in a civilian capacity, be legally bound as from the day so specified to obey any directions given by the authority so specified as to his entering employment in a civilian capacity.

(2) A notice under sub-section (1) calling up a person for service in a civilian capacity shall be issued by the competent authority only at the request of, or otherwise in consultation with, an officer (or officers) empowered by the Central Government for the purposes of this sub-section to authorise such issue, and the authority specified in such notice as that to which the person called up shall present himself shall be such authority as that officer (or those officers) may direct.

(3) Where a calling-up notice has been duly served on any person, the competent authority may, at any time while that person remains liable under this Act to be called up for national service, cancel the notice and cause to be served on him a further notice varying the original notice.

(4) A calling-up notice served on any person shall cease to have effect if, before the date on which he is thereby required to present himself, he ceases to be liable under this Act to be called up for national service.

(5) Such travelling and other allowances as may be prescribed shall be paid by the competent authority to any person required to present himself in accordance with a calling-up notice.

Appeals in  
connection  
with calling-  
up notices.

**7A.** (1) Where a calling-up notice is served under section 7 upon any person who has been reported by the National Service Advisory Committee to be not available for national service, a copy of the notice shall at the same time be served upon his employer, and that person himself or the employer of that person may, at any time before the seventh day from the service of the notice, appeal against the order to the Tribunal constituted under section 9.

(2) Where a calling-up notice is served under section 7 upon any person who has been reported by the National Service Advisory Committee to be available for national service, a copy of the notice shall be served at the same time on his employer, if any, and that person himself or the employer, if any, of that person may, at any time before the seventh day from the service of the notice, appeal against the order to the Tribunal constituted under section 9.

(3) Any person, on whom a calling-up notice under section 7 is served, may, without prejudice to the provisions of sub-section (1) and sub-section (3), at any time before the seventh day from the service of the notice, appeal to the Tribunal constituted under section 9 on the ground that he is not fit for the service for which he is called up.

(4) Pending the disposal of an appeal under this section, the notice under section 7 shall be deemed to be suspended, and if the Tribunal decides that such person is not available for national service or is not fit for the service specified in the notice, as the case may be, the notice shall be cancelled.

**7B.** (1) When any person is called up under section 7 for service in a specified civilian capacity, his terms of service in such capacity shall be laid down by the competent authority in each case, subject to such conditions as may be prescribed, and such conditions may provide for the preservation of any rights which the person called up may have under any provident or superannuation fund or other scheme for the benefit of employees maintained in connection with the employment he relinquishes.

Terms of service of persons entering civilian employment.

(2) Such person himself, or the employer under whom he enters employment in pursuance of the notice issued under section 7, may appeal to the Tribunal constituted under section 9 against any decision of the competent authority under sub-section (1), and the decision of the said Tribunal shall be final; but pending the disposal of any such appeal the notice under section 7 shall, unless the competent authority otherwise directs, continue to be of full force and effect.

**7C.** When any person called up under section 7 for service in one of His Majesty's Forces has any rights under any provident or superannuation fund or other scheme for the benefit of employees maintained in connection with the employment he relinquishes, he shall continue so long as he remains in

Preservation of certain rights of persons called up for service in His Majesty's Forces.

His Majesty's Forces to have in respect of such fund or scheme such rights as may be prescribed.]

Reinstatement.

8. It shall be the duty of any employer by whom a person who has been <sup>1</sup>[called up under this Act for national service], or by whom a European British subject who has been called out for service in the Reserve of His Majesty's regular Naval, Military or Air Forces at any time after the 2nd day of September, 1939, and before the termination of hostilities, or by whom a person subject to this Act who with the consent of his employers was between the 2nd day of September, 1939, and the coming into force of this Act granted an emergency commission or enlisted in His Majesty's armed forces or accepted for training as a cadet at an officers' training school, was employed, to reinstate him in his employment at the termination of that service in an occupation and under conditions not less favourable to him than those which would have been applicable to him had he not been so taken into service as aforesaid:

Provided that if for any reason the reinstatement of such person or member is represented by the employer to be impracticable, either party may refer the matter to a tribunal constituted under section 9 and that tribunal shall after consideration pass an order either exempting the employer from the provisions of this section or requiring him to re-employ such person or member on such terms as it thinks suitable, or requiring him to pay to such person or member a sum in compensation for failure to re-employ not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer; and if any employer fails to obey the order of the tribunal, he shall be punishable with a fine which may extend to one thousand rupees; and the Court by which an employer is convicted under this section may order him (if he has not already been so required by the tribunal) to pay the person whom he has failed to re-employ a sum not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer, and any amount so required by the tribunal to be paid or so ordered by the Court to be paid shall be recoverable as if it were a fine imposed by such Court:

<sup>1</sup> Subs. for the original words by s. 10 of the National Service (European British Subjects) Amendment Ordinance, 1940 (5 of 1940).

Provided further that in any proceedings under this section it shall be a defence for an employer to prove that the person formerly employed by him did not apply to the employer for reinstatement within a period of two months from the termination of the national service <sup>1</sup>[for which he was called up under this Act].

9. (1) The Central Government shall constitute for **Tribunals.** such areas and in such places as it thinks fit tribunals to hear and decide any matters referred to it under the proviso to section 8 <sup>2</sup>[and any appeals made to it under sub-section (4) of section 6A or section 7A or section 7B];

(2) Each tribunal shall consist of three members to be nominated by the Central Government, of whom one who shall be Chairman of the tribunal shall be a member of a Civil Service of the Crown not lower in status than a District and Sessions Judge, one shall be a military officer not below the rank of Brigadier, and one shall be a European British subject, not being a servant of the Crown.

(3) No person serving as a member of a National Service Advisory Committee constituted under section 5 shall while so serving be a member of a tribunal.

(4) A tribunal may meet at such times and places as it thinks fit and shall meet when required to do so by the competent authority.

<sup>3</sup>[(5) The Chairman of the Tribunal and any one other member of the Tribunal shall constitute a quorum].

<sup>4</sup>[(6)] A tribunal shall have the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery and production of documents, and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

v of 1938.

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<sup>1</sup> Subs. for the original words by s. 10 of the National Service (*European British Subjects*) Amendment Ordinance, 1940 (5 of 1940).

<sup>2</sup> Added by s. 11, *ibid.*

<sup>3</sup> Ins., *ibid.*

<sup>4</sup> Re-numbered, *ibid.*

Penalties and  
procedure.

10. (1) Whoever wilfully fails to comply with any notice issued under section 4 <sup>1</sup>[or section 7] or with any order given under <sup>2</sup>[sub-section (8) of section 5, or with any direction given by the authority specified in a notice issued under section 7 as to his entering employment in a civilian capacity]; shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

<sup>1</sup>[(2) Whoever, having entered civilian employment in pursuance of a direction given by the authority specified in a notice issued under section 7, leaves that employment without the permission of the competent authority shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(3) Whoever, being an employer under whom any person enters employment in a civilian capacity in pursuance of a notice issued under section 7, fails to comply in all respects with the terms of service laid down under section 7B in respect of such person, shall, without prejudice to any civil liability incurred by such failure, be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both].

<sup>3</sup>[(4)] No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

Service of  
notices.

11. Any notice to be served on any person for the purposes of this Act may be sent by post addressed to that person at his last known address.

Bar of legal  
proceedings.

<sup>4</sup>[11A. No suit or other proceeding shall lie in any Court in respect of anything done or in good faith intended to be done under this Act].

Power to make  
rules.

12. (1) The Central Government may, by notification in the official Gazette, make rules for the purpose of giving effect to the provisions of this Act.

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<sup>1</sup> Ins. by s. 12 of the National Service (European British Subjects) Amendment Ordinance, 1940 (5 of 1940).

<sup>2</sup> Subs. for the original words, *ibid.*

<sup>3</sup> Re-numbered, *ibid.*

<sup>4</sup> Ins. by s. 13, *ibid.*

1940 : Act XXIII.] *Drugs.*

(2) Without prejudice to the generality of the foregoing power, the Central Government may make rules prescribing the forms of the notices referred to in sub-section (1) of section 4 <sup>1</sup>[and sub-section (1) of section 7], the amount and manner of payment of the allowances referred to in sub-section (4) of section 4 <sup>1</sup>[and sub-section (5) of section 7, the form of and the particulars to be contained in a claim preferred under section 6A, the conditions referred to in sub-section (1) of section 7B, the rights to be prescribed under section 7C]; and the procedure to be followed <sup>2</sup>[in appeals under sub-section (4) of section 6A or section 7A or section 7B or references under the proviso to section 8 to a Tribunal];

<sup>3</sup>[(3) In making any rule under this section the Central Government may provide that a contravention of the rule shall be punishable with imprisonment for any term not exceeding six months, or with fine not exceeding one thousand rupees, or with both].

13. Nothing in this Act shall apply to any person—
- (a) for the time being confined in a prison or a lunatic asylum, or
  - (b) who is under the age of eighteen or over the age of fifty.

Act not to  
apply to cer-  
tain persons.

## THE DRUGS ACT, 1940.

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<sup>1</sup> Ins. by s. 14 of the National Service (European British Subjects) Amendment Ordinance, 1940 (5 of 1940).

<sup>2</sup> Subs. for the original words, *ibid.*

<sup>3</sup> Added, *ibid.*



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THE SCHEDULE.—Standards to be complied with by imported drugs and by drugs manufactured for sale, sold, stocked or exhibited for sale, or distributed.

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ACT No. XXIII OF 1940.<sup>1</sup>

[10th April, 1940.]

**An Act to regulate the import, manufacture, distribution and sale of drugs.**

**W**HEREAS it is expedient to regulate the import into, and the manufacture, distribution and sale in, British India of drugs;

**AND WHEREAS** the Legislatures of all the Provinces have passed resolutions in terms of section 103 of the Government of India Act, 1935, in relation to such of the above-mentioned matters and matters ancillary thereto as are enumerated in List II of the Seventh Schedule to the said Act;

It is hereby enacted as follows:—

## CHAPTER I.

## INTRODUCTORY.

1. (1) This Act may be called the Drugs Act, 1940.
- (2) It extends to the whole of British India.

Short title  
extent and  
commence-  
ment.

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<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1940, Pt. V, p. 34; for the Report of the Select Committee, see *ibid.*, p. 143.

This Act has been applied to British Baluchistan, see Notification No. 168—N, dated 17th October, 1940, Gazette of India, 1940, Pt. I, p. 1478.

*(Chapter I.—Introductory.)*

(3) It shall come into force at once; but Chapter III shall take effect only from such date as the Central Government may, by notification in the official Gazette, appoint in this behalf, and Chapter IV shall take effect in a particular Province only from such date as the Provincial Government may, by like notification, appoint in this behalf.

Application of  
other laws not  
barred.

2. The provisions of this Act shall be in addition to, and not in derogation of, the Dangerous Drugs Act, 1930, and any other law for the time being in <sup>II</sup> of 1930 force.

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

- (a) “the Board” means the Drugs Technical Advisory Board constituted under section 5;
- (b) “drug” includes all medicines for internal or external use of human beings or animals, and all substances intended to be used for or in the treatment, mitigation or prevention of disease in human beings or animals other than medicines and substances exclusively used or prepared for use in accordance with the Ayurvedic or Unani systems of medicine;
- (c) “to import”, with its grammatical variations and cognate expressions, means to bring into British India;
- (d) “patent or proprietary medicine” means a drug which is a remedy or prescription prepared for internal or external use of human beings or animals, and which is not for the time being recognised by the Permanent Commission on Biological Standardisation of the League of Nations or in the latest edition of the British Pharmacopœia or the British Pharmaceutical Codex or any other pharmacopœia authorised in this behalf by the Central Government after consultation with the Board;
- (e) “prescribed” means prescribed by rules made under Chapter II or Chapter III by the Central Government, or under Chapter IV by the Provincial Government.

(Chapter I.—Introductory. Chapter II.—The Drugs Technical Advisory Board, the Central Drugs Laboratory and the Drugs Consultative Committee.)

4. Any substance specified as poisonous by rule made under Chapter III or Chapter IV shall be deemed to be a poisonous substance for the purposes of Chapter III or Chapter IV, as the case may be.

Presumption as to poisonous substances.

## CHAPTER II.

### THE DRUGS TECHNICAL ADVISORY BOARD, THE CENTRAL DRUGS LABORATORY AND THE DRUGS CONSULTATIVE COMMITTEE.

5. (1) The Central Government shall, as soon as may be, constitute a Board (to be called the Drugs Technical Advisory Board) to advise the Central Government and the Provincial Governments on technical matters arising out of the administration of this Act and to carry out the other functions assigned to it by this Act.

The Drugs Technical Advisory Board.

(2) The Board shall consist of the following members, namely:—

- (i) the Director-General, Indian Medical Service, *ex-officio*, who shall be Chairman;
- (ii) the Director of the Central Drugs Laboratory, *ex-officio*;
- (iii) the Director of the Central Research Institute, *ex-officio*;
- (iv) the Director of the Imperial Veterinary Research Institute, Muktesar, *ex-officio*;
- (v) the Chief Chemist, Central Revenues, *ex-officio*;
- (vi) two persons holding the appointment of Government Analyst under this Act, to be nominated by the Central Government;
- (vii) one pharmacologist and one pharmaceutical chemist to be elected by the Scientific Advisory Board of the Indian Research Fund Association;
- (viii) three persons to be elected by the Medical Council of India, two of whom shall be from among teachers of medicine or therapeutics on the staff of a university or college in British India providing a course of study which qualifies for admission to the examination for a degree which is a recognised qualification under the Indian Medical Council Act, 1933,

(Chapter II.—*The Drugs Technical Advisory Board, the Central Drugs Laboratory and the Drugs Consultative Committee.*)

and one shall be a registered medical practitioner not being a servant of the Crown;

(ix) one member of the pharmaceutical profession to be nominated by the Central Government;

(x) two persons to be elected by the Council of the Indian Chemical Society;

(xi) one person to be elected by the Central Council of the Indian Medical Association and one person to be elected by the branches in India of the British Medical Association.

(3) The nominated and elected members of the Board shall hold office for three years, but shall be eligible for re-nomination and re-election.

(4) The Board may, subject to the previous approval of the Central Government, make by-laws fixing a quorum and regulating its own procedure and the conduct of all business to be transacted by it.

(5) The Board may constitute sub-committees and may appoint to such sub-committees for such periods, not exceeding three years, as it may decide, or temporarily for the consideration of particular matters, persons who are not members of the Board.

(6) The functions of the Board may be exercised notwithstanding any vacancy therein.

(7) The Central Government shall appoint a person to be Secretary of the Board and shall provide the Board with such clerical and other staff as the Central Government considers necessary.

6. (1) The Central Government shall, as soon as may be, establish a Central Drugs Laboratory under the control of a Director to be appointed by the Central Government, to carry out the functions entrusted to it by this Act or any rules made under this Chapter:

Provided that, if the Central Government so prescribes, the functions of the Central Drugs Laboratory in respect of any drug or class of drugs shall be carried out at the Central Research Institute, Kasauli, or at any other prescribed Laboratory and the functions of the Director of the Central Drugs

(Chapter II.—*The Drugs Technical Advisory Board, the Central Drugs Laboratory and the Drugs Consultative Committee.*)

Laboratory in respect of such drug or class of drugs shall be exercised by the Director of that institute or of that other Laboratory, as the case may be.

(2) The Central Government may, after consultation with the Board, make rules prescribing—

(a) the functions of the Central Drugs Laboratory;

(b) the procedure for the grant of certificates of registration under this Act by the said Laboratory in respect of patent or proprietary medicines not having displayed on the label or container thereof the true formula or list of ingredients contained therein in a manner readily intelligible to members of the medical profession, the forms of such certificates and the fees payable therefor;

(c) the procedure for preserving the secrecy of the formulæ of patent or proprietary medicines when disclosed to the said Laboratory under this Act;

(d) the procedure for the submission to the said Laboratory under Chapter IV of samples of drugs for analysis or test, the forms of the Laboratory's reports thereon and the fees payable in respect of such reports;

(e) such other matters as may be necessary or expedient to enable the said Laboratory to carry out its functions;

(f) the matters necessary to be prescribed for the purposes of the proviso to sub-section (1).

7. (1) The Central Government may constitute an advisory committee to be called "the Drugs Consultative Committee" to advise the Central Government, the Provincial Governments and the Drugs Technical Advisory Board on any matter tending to secure uniformity throughout the Provinces in the administration of this Act.

The Drugs  
Consultative  
Committee.

(2) The Drugs Consultative Committee shall consist of two representatives of the Central Government to be nominated by that Government and one representative of each Provincial Government to be nominated by the Provincial Government concerned.

(Chapter II.—The Drugs Technical Advisory Board, the Central Drugs Laboratory and the Drugs Consultative Committee. Chapter III.—Import of Drugs.)

(3) The Drugs Consultative Committee shall meet when required to do so by the Central Government and shall have power to regulate its own procedure.

### CHAPTER III.

#### IMPORT OF DRUGS.

Standards of  
quality.

8. (1) For the purposes of this Chapter the expression "standard quality" when applied to a drug means that the drug complies with the standard set out in the Schedule.

(2) The Central Government, after consultation with the Board and after giving by notification in the official Gazette not less than three months' notice of its intention so to do, may by a like notification add to or otherwise amend the Schedule for the purposes of this Chapter, and thereupon the Schedule shall be deemed to be amended accordingly.

is branded  
drugs.

9. For the purposes of this Chapter a drug shall be deemed to be misbranded—

- (a) if it is an imitation of, or substitute for, or resembles in a manner likely to deceive, another drug, or bears upon it or upon its label or container the name of another drug, unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug; or
- (b) if it purports to be the product of a place or country of which it is not truly a product; or
- (c) if it is imported under a name which belongs to another drug; or
- (d) if it is so coloured, coated, powdered or polished that damage is concealed, or if it is made to appear of better or greater therapeutic value than it really is; or
- (e) if it is not labelled in the prescribed manner; or
- (f) if its label or container or anything accompanying the drug bears any statement, design or device which makes any false claim for the drug or which is false or misleading in any particular; or

*(Chapter III.—Import of Drugs.)*

- (g) if the label or container bears the name of an individual or company purporting to be the manufacturer or producer of the drug, which individual or company is fictitious or does not exist.

10. From such date as may be fixed by the Central Government by notification in the official Gazette, <sup>Prohibition of import of certain drugs.</sup> in this behalf, no person shall import—

- (a) any drug which is not of standard quality;
- (b) any misbranded drug;
- (c) any drug for the import of which a licence is prescribed, otherwise than under, and in accordance with, such licence;
- (d) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof either the true formula or list of ingredients contained in it in a manner readily intelligible to members of the medical profession, or the number of the certificate of registration granted in the prescribed manner in respect of such medicine by the Central Drugs Laboratory after being correctly informed of the formula of such medicine;
- (e) any drug which by means of any statement design or device accompanying it or by any other means, purports or claims to cure or mitigate any such disease or ailment, or to have any such other effect, as may be prescribed;
- (f) any drug the import of which is prohibited by rule made under this Chapter:

Provided that nothing in this section shall apply to the import, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis or for personal use :

Provided further that the Central Government may, after consultation with the Board, by notification in the official Gazette, permit, subject to any conditions specified in the notification, the import of any drug or class of drugs not being of standard quality.



*(Chapter III.—Import of Drugs.)*

*Explanation.*—The formula or list of ingredients mentioned in clause (d) shall be deemed to be true and a sufficient compliance with that sub-clause if, without disclosing a full and detailed recipe of the ingredients, it indicates correctly all potent or poisonous substances contained therein together with an approximate statement of the composition of the medicine.

Application of  
law relating to  
sea customs  
and powers of  
Customs  
officers.

11. (1) The law for the time being in force relating to sea customs and to goods, the import of which is prohibited by section 18 of the Sea Customs Act, 1878, shall, subject to the provisions of section 13 of this Act, apply in respect of drugs the import of which is prohibited under this Chapter, and officers of Customs and officers empowered under that Act to perform the duties imposed thereby on a Customs Collector and other officers of Customs, shall have the same powers in respect of such drugs as they have for the time being in respect of such goods as aforesaid VIII of 1878.

(2) Without prejudice to the provisions of sub-section (1), the Customs Collector, or any servant of the Crown authorised by the Provincial Government in this behalf, may detain any imported package which he suspects to contain any drug the import of which is prohibited under this Chapter, and shall forthwith report such detention to the Director of the Central Drugs Laboratory and, if required by him, forward the package or samples of any suspected drug found therein to the said Laboratory.

Power of  
Central  
Government  
to make rules.

12. (1) The Central Government may, after consultation with the Board and after previous publication by notification in the official Gazette, make rules for the purpose of giving effect to the provisions of this Chapter

(2) Without prejudice to the generality of the foregoing power, such rules may—

(a) specify the drugs or classes of drugs for the import of which a licence is required, and prescribe the form and conditions of such licences, the authority empowered to issue the same, and the fees payable therefor;

(b) prescribe the methods of test or analysis to be employed in determining whether a drug is of standard quality;

*(Chapter III —Import of Drugs.)*

- (c) prescribe, in respect of biological and organo-metallic compounds, the units or methods of standardisation;
- (d) specify the diseases or ailments which an imported drug may not purport or claim to cure or mitigate and such other effects which such drug may not purport or claim to have;
- (e) prescribe the conditions subject to which small quantities of drugs, the import of which is otherwise prohibited under this Chapter, may be imported for the purpose of examination, test or analysis or for personal use;
- (f) prescribe the places at which drugs may be imported, and prohibit their import at any other place;
- (g) require the date of manufacture and the date of expiry of potency to be clearly and truly stated on the label or container of any specified imported drug or class of such drug, and prohibit the import of the said drug or class of drug after the expiry of a specified period from the date of manufacture;
- (h) regulate the submission by importers, and the securing of samples of drugs for examination, test or analysis by the Central Drugs Laboratory, and prescribe the fees, if any, payable for such examination, test or analysis;
- (i) prescribe the evidence to be supplied, whether by accompanying documents or otherwise, of the quality of drugs sought to be imported, the procedure of officers of Customs in dealing with such evidence, and the manner of storage at places of import of drugs detained pending admission;
- (j) provide for the exemption, conditionally or otherwise, from all or any of the provisions of this Chapter and the rules made thereunder of drugs imported for the purpose only of transport through, and export from, British India:

*(Chapter III.—Import of Drugs.)*

- (k) prescribe the conditions to be observed in the packing in bottles, packages or other containers, of imported drugs;
- (l) regulate the mode of labelling drugs imported for sale in packages, and prescribe the matters which shall or shall not be included in such labels;
- (m) prescribe the maximum proportion of any poisonous substance which may be added to or contained in any imported drug, prohibit the import of any drug in which that proportion is exceeded, and specify substances which shall be deemed to be poisonous for the purposes of this Chapter and the rules made thereunder;
- (n) require that the accepted scientific name of any specified drug shall be displayed in the prescribed manner on the label or wrapper of any imported, patent or proprietary medicine containing such drug;
- (o) provide for the exemption, conditionally or otherwise, from all or any of the provisions of this Chapter or the rules made thereunder, of any specified drug or class of drugs.

**Offences.**

13. (1) Whoever contravenes any of the provisions of this Chapter or of any rule made thereunder shall, in addition to any penalty to which he may be liable under the provision of section 11, be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

(2) Whoever, having been convicted under sub-section (1), is again convicted under that sub-section shall, in addition to any penalty as aforesaid, be punishable with imprisonment which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

**Confiscation.**

14. Where any offence punishable under section 13 has been committed, the consignment of the drug in respect of which the offence has been committed shall be liable to confiscation.

**Jurisdiction.**

15. No Court inferior to that of a Presidency Magistrate or of a Magistrate of the first class shall try an offence punishable under section 13.

(Chapter IV — *Manufacture, Sale and Distribution of Drugs.*)

CHAPTER IV.

MANUFACTURE, SALE AND DISTRIBUTION OF DRUGS.

16. (1) For the purposes of this Chapter the expression "standard quality" when applied to a drug means that the drug complies with the standard set out in the Schedule. Standards of quality.

(2) The Provincial Government, after consultation with the Board and after giving by notification in the official Gazette not less than three months' notice of its intention so to do, may by a like notification add to or otherwise amend the Schedule for the purposes of this Chapter, and thereupon the Schedule shall be deemed to be amended accordingly.

17. For the purposes of this Chapter a drug shall be deemed to be misbranded— Misbranded drugs.

- (a) if it is an imitation of, or substitute for, or resembles in a manner likely to deceive, another drug, or bears upon it or upon its label or container the name of another drug, unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug; or
- (b) if it purports to be the product of a place or country of which it is not truly a product; or
- (c) if it is sold, or offered or exposed for sale, under a name which belongs to another drug; or
- (d) if it is so coloured, coated, powdered or polished that damage is concealed, or if it is made to appear of better or greater therapeutic value than it really is; or
- (e) if it is not labelled in the prescribed manner; or
- (f) if its label or container or anything accompanying the drug bears any statement, design or device which makes any false claim for the drug or which is false or misleading in any particular; or
- (g) if the label or container bears the name of an individual or company purporting to be the manufacturer or producer of the drug

*(Chapter IV.—Manufacture, Sale and Distribution of Drugs.)*

which individual or company is fictitious or does not exist.

Prohibition of  
manufacture  
and sale of  
certain drugs.

13. From such date as may be fixed by the Provincial Government by notification in the official Gazette in this behalf, no person shall himself or by any other person on his behalf—

- (a) manufacture for sale, or sell, or stock or exhibit for sale, or distribute—
  - (i) any drug which is not of standard quality;
  - (ii) any misbranded drug;
  - (iii) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof either the true formula or list of ingredients contained in it in a manner readily intelligible to members of the medical profession, or the number of the certificate of registration granted, in the manner prescribed by the Central Government, in respect of such medicine by the Central Drugs Laboratory after being correctly informed of the formula of such medicine;
  - (iv) any drug which by means of any statement, design or device accompanying it or by any other means, purports or claims to cure or mitigate any such disease or ailment, or to have any such other effect as may be prescribed;
  - (v) any drug, in contravention of any of the provisions of this Chapter or any rule made thereunder;
- (b) sell, or stock, or exhibit for sale, or distribute any drug which has been imported or manufactured in contravention of any of the provisions of this Act or any rule made thereunder;
- (c) manufacture for sale, or sell, or stock or exhibit for sale, or distribute any drug, except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter:

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions.

(Chapter IV.—*Manufacture, Sale and Distribution of Drugs.*)

of small quantities of any drug for the purpose of examination, test or analysis:

Provided further that the Provincial Government may, after consultation with the Board, by notification in the official Gazette, permit, subject to any conditions specified in the notification, the manufacture for sale, sale or distribution of any drug or class of drugs not being of standard quality.

*Explanation.*—The formula or list of ingredients mentioned in sub-clause (iii) of clause (a) shall be deemed to be true and a sufficient compliance with that sub-clause if, without disclosing a full and detailed recipe of the ingredients, it indicates correctly all the potent or poisonous substances contained therein together with an approximate statement of the composition of the medicine.

19. (1) Save as hereinafter provided in this section, *Pleas.* it shall be no defence in a prosecution under this Chapter to prove merely that the accused was ignorant of the nature, substance or quality of the drug in respect of which the offence has been committed or of the circumstances of its manufacture or import, or that a purchaser, having bought only for the purpose of test or analysis, has not been prejudiced by the sale.

(2) For the purposes of section 18 a drug shall not be deemed to be misbranded or to be below standard quality only by reason of the fact that—

(a) there has been added thereto some innocuous substance or ingredient because the same is required for the manufacture or preparation of the drug as an article of commerce in a state fit for carriage or consumption, and not to increase the bulk, weight or measure of the drug or to conceal its inferior quality or other defects; or

(b) in the process of manufacture, preparation or conveyance some extraneous substance has unavoidably become intermixed with it: provided that this clause shall not apply in relation to any sale or distribution of the drug occurring after the vendor or distributor became aware of such intermixture.

(Chapter IV.—*Manufacture, Sale and Distribution of Drugs.*)

(3) A person, not being the manufacturer of a drug or his agent for the distribution thereof, shall not be liable for a contravention of section 18 if he proves—

- (a) that he did not know, and could not with reasonable diligence have ascertained, that the drug in any way contravened the provisions of that section, and that the drug while in his possession remained in the same state as when he acquired it; or
- (b) that he acquired the drug from a person resident in British India under a written warranty in the prescribed form and signed by such person that the drug does not in any way contravene the provisions of section 18, and that the drug while in his possession remained in the same state as when he acquired it:

Provided that a defence under clause (b) shall be open to a person only—

- (i) if he has, within seven days of the service on him of the summons, sent to the Inspector a copy of the warranty with a written notice stating that he intends to rely upon it and giving the name and address of the warrantor, and
- (ii) if he proves that he has, within the same period, sent written notice of such intention to the said warrantor.

Government  
Analysts.

20. The Provincial Government may, by notification in the official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications, to be Government Analysts for such areas and in respect of such drugs or classes of drugs as may be specified in the notification:

Provided that a servant of the Crown serving under the Central Government or another Provincial Government shall not be so appointed without the previous consent of the Government under which he is serving.

Inspectors.

21. (1) The Provincial Government may, by notification in the official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications, to be Inspectors for the purposes of this Chapter

*Charter IV.—Manufacture, Sale and Distribution of Drugs.)*

within such local limits as it may assign to them respectively:

Provided that no person who has any financial interest in the manufacture, import or sale of drugs shall be appointed to be an Inspector under this sub-section.

(2) Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code, and shall be officially subordinate to such authority as the Provincial Government may specify in this behalf.

22. Subject to the provisions of section 23 and of any rules made by the Provincial Government in this behalf, an Inspector may, within the local limits for which he is appointed.— Powers of Inspectors.

- (a) inspect any premises wherein any drug is being manufactured and in the case of sera, vaccines and any other drug prescribed in this behalf the plant and process of manufacture and the means employed for standardising and testing the drug;
- (b) take samples of any drug which is being manufactured, or being sold or is stocked or exhibited for sale, or is being distributed;
- (c) where he has reason to believe that any drug which is being manufactured for sale, or being sold or is stocked or exhibited for sale, or is being distributed, contravenes any of the provisions of section 18, order in writing the person, in whose possession such drug may be, not to dispose of any stock of such drug for a specified period not exceeding ten days, or, unless the alleged contravention is such that the defect may be removed by the possessor of the drug, seize the stock of such drug:

Provided that the Inspector shall not take any action under this clause unless he has reported the facts to the District Magistrate or the Chief Presidency Magistrate and has been authorized by such Magistrate to take such action;



(Chapter IV.—*Manufacture, Sale and Distribution of Drugs.*)

(d) for any of the aforesaid purposes enter at all reasonable times, with such assistants, if any, as he considers necessary, any premises wherein any drug is being manufactured, or being sold or is stocked or exhibited for sale, or is kept for distribution;

(e) exercise such other powers as may be necessary for carrying out the purposes of this Chapter or any rules made thereunder.

Procedure of  
Inspectors.

23. (1) Where an Inspector takes any sample of a drug under this Chapter, he shall tender the fair price thereof and may require a written acknowledgment therefor.

(2) Where the price tendered under sub-section (1) is refused, or where the Inspector seizes the stock of any drug under clause (c) of section 22, he shall tender a receipt therefor in the prescribed form.

(3) Where an Inspector takes a sample of a drug for the purpose of test or analysis, he shall intimate such purpose in writing in the prescribed form to the person from whom he takes it and, in the presence of such person unless he wilfully absents himself, shall divide the sample into four portions and effectively seal and suitably mark the same and permit such person to add his own seal and mark to all or any of the portions so sealed and marked:

Provided that where the sample is taken from premises whereon the drug is being manufactured, it shall be necessary to divide the sample into three portions only:

Provided further that where the drug is made up in containers of small volume, instead of dividing a sample as aforesaid, the Inspector may, and if the drug be such that it is likely to deteriorate or be otherwise damaged by exposure shall, take three or four, as the case may be, of the said containers after suitably marking the same and, where necessary, sealing them.

(4) The Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it, and shall

*(Chapter IV.—Manufacture, Sale and Distribution of Drugs.)*

retain the remainder and dispose of the same as follows:—

- (i) one portion or container he shall forthwith send to the Government Analyst for test or analysis;
- (ii) the second he shall produce to the Court before which proceedings, if any, are instituted in respect of the drug; and
- (iii) the third, where taken, he shall send to the warrantor, if any, named under the proviso to sub-section (3) of section 19.

(5) Where an Inspector takes any action under clause (c) of section 22,—

- (a) he shall use all despatch in ascertaining whether or not the drug contravenes any of the provisions of section 18 and, if it is ascertained that the drug does not so contravene, forthwith revoke the order passed under the said clause or, as the case may be, take such action as may be necessary for the return of the stock seized;
- (b) if he seizes the stock of the drug, he shall as soon as may be inform a Magistrate and take his orders as to the custody thereof;
- (c) without prejudice to the institution of any prosecution, if the alleged contravention be such that the defect may be remedied by the possessor of the drug, he shall, on being satisfied that the defect has been so remedied, forthwith revoke his order under the said clause.

24. Every person for the time being in charge of any premises whereon any drug is being manufactured or is kept for sale or distribution shall, on being required by an Inspector so to do, be legally bound to disclose to the Inspector the place where the drug is being manufactured or is kept, as the case may be.

*Persons bound to disclose place where drugs are manufactured or kept.*

25. (1) The Government Analyst to whom a sample of any drug has been submitted for test or analysis under sub-section (4) of section 23, shall deliver to the Inspector submitting it a signed report in triplicate in the prescribed form.

*Reports of Government Analysts.*

*(Chapter IV.—Manufacture, Sale and Distribution of Drugs.)*

(2) The Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and another copy to the warrantor, if any, named under the proviso to sub-section (3) of section 19, and shall retain the third copy for use in any prosecution in respect of the sample.

(3) Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken or the said warrantor has, within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report.

(4) Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of a Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused, cause the sample of the drug produced before the Magistrate under sub-section (4) of section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

(5) The cost of a test or analysis made by the Central Drugs Laboratory under sub-section (4) shall be paid by the complainant or accused as the Court shall direct.

Purchaser of  
drug enabled  
to obtain test  
or analysis.

26. Any person shall, on application in the prescribed manner and on payment of the prescribed fee, be entitled to submit for test or analysis to a Government Analyst any drug purchased by him, and to receive a report of such test or analysis signed by the Government Analyst.

Penalty for  
manufacture,  
sale, etc.,  
of drugs in  
contravention  
of this Chap-  
ter.

27. Whoever himself or by any other person on his behalf manufactures for sale, sells, stocks or exhibits for sale, or distributes any drug in contravention of any of the provisions of this Chapter or

*(Chapter IV.—Manufacture, Sale and Distribution of Drugs.)*

any rule made thereunder shall be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

28. (1) Whoever in respect of any drug sold by him whether as principal or agent, gives to the purchaser a false warranty that the drug does not in any way contravene the provisions of section 18 shall, unless he proves that when he gave the warranty he had good reason to believe the same to be true, be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

*Penalties for giving false warranty or misuse of warranty.*

(2) Whoever applies or permits to be applied to any drug sold, or stocked or exhibited for sale, by him, whether on the container or label or in any other manner, a warranty given in respect of any other drug, shall be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

29. Whoever uses any report of a test or analysis made by the Central Drugs Laboratory or by a Government Analyst, or any extract from such report for the purpose of advertising any drug, shall be punishable with fine which may extend to five hundred rupees.

*Penalty for use of Government Analyst's report for advertising.*

30. Whoever, having been convicted of any offence under section 27 or section 28 or section 29, is again convicted of an offence under the same section shall be punishable with imprisonment which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

*Penalty to subsequent offences.*

31. Where any person has been convicted under this Chapter for contravening any such provision of this Chapter or any rule made thereunder as may be specified by rule made in this behalf, the stock of the drug in respect of which the contravention has been made shall be liable to confiscation.

*Confiscation.*

32. (1) No prosecution under this Chapter shall be instituted except by an Inspector.

*Cognisance of offences.*

(2) No Court inferior to that of a Presidency Magistrate or of a Magistrate of the first class shall try an offence punishable under this Chapter.

(Chapter IV.—*Manufacture, Sale and Distribution of Drugs.*)

(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter.

Power of Provincial Government to make rules.

**33.** (1) The Provincial Government may, after consultation with the Board and after previous publication by notification in the official Gazette, make rules for the purpose of giving effect to the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may—

- (a) provide for the establishment of laboratories for testing and analysing drugs;
- (b) prescribe the qualifications and duties of Government Analysts and the qualifications of Inspectors;
- (c) prescribe the methods of test or analysis to be employed in determining whether a drug is of standard quality,
- (d) prescribe, in respect of biological and organo-metallic compounds, the units or methods of standardisation;
- (e) prescribe the forms of licences for the manufacture for sale, for the sale and for the distribution of drugs or any specified drug or class of drugs, the form of application for such licences, the conditions subject to which such licences may be issued, the authority empowered to issue the same and the fees payable therefor;
- (f) specify the diseases or ailments which a drug may not purport or claim to cure or mitigate and such other effects which a drug may not purport or claim to have;
- (g) prescribe the conditions subject to which small quantities of drugs may be manufactured for the purpose of examination, test or analysis;
- (h) require the date of manufacture and the date of expiry of potency to be clearly and truly stated on the label or container of any specified drug or class of drugs,

*(Chapter IV.—Manufacture, Sale and Distribution of  
Drugs.)*

and prohibit the sale, stocking or exhibition for sale, or distribution of the said drug or class of drugs after the expiry of a specified period from the date of manufacture or after the expiry of the date of potency;

- (i) prescribe the conditions to be observed in the packing in bottles, packages and other containers of drugs, and prohibit the sale, stocking or exhibition for sale, or distribution of drugs packed in contravention of such conditions;
- (j) regulate the mode of labelling packed drugs, and prescribe the matters which shall or shall not be included in such labels;
- (k) prescribe the maximum proportion of any poisonous substance which may be added to or contained in any drug, prohibit the manufacture, sale or stocking or exhibition for sale, or distribution of any drug in which that proportion is exceeded, and specify substances which shall be deemed to be poisonous for the purposes of this Chapter and the rules made thereunder;
- (l) require that the accepted scientific name of any specified drug shall be displayed in the prescribed manner on the label or wrapper of any patent or proprietary medicine containing such drug;
- (m) prescribe the form of warranty referred to in sub-section (I) of section 19;
- (n) regulate the powers and duties of Inspectors;
- (o) prescribe the forms of report to be given by Government Analysts, and the manner of application for test or analysis under section 26 and the fees payable therefor;
- (p) specify the offences against this Chapter or any rule made thereunder in relation to which the stock of the drug shall be liable to confiscation under section 31;

(Chapter IV.—*Manufacture, Sale and Distribution of Drugs.—The Schedule.*)

(g) provide for the exemption, conditionally or otherwise, from all or any of the provisions of this Chapter or the rules made thereunder, of any specified drug or class of drugs.

Protection to  
persons acting  
under this  
Chapter.

34. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Chapter.

### THE SCHEDULE.

(See sections 8 and 16.)

*Standards to be complied with by imported drugs and by drugs manufactured for sale, sold, stocked or exhibited for sale, or distributed.*

Class of drug.	Standard to be complied with.
1. Patent or proprietary medicines.	The formula or list of ingredients displayed in the prescribed manner on the label or container, or the formula disclosed to the Central Drugs Laboratory, as the case may be.
2. Substances commonly known as vaccines, sera, toxins, toxoids, antitoxins, and antigens and biological products of such nature.	The standards maintained at the National Institute for Medical Research, London, and such further standards of strength, quality and purity as may be prescribed.
3. Vitamins, hormones and analogous products.	The standards maintained at the National Institute for Medical Research, London, and such further standards of strength, quality and purity as may be prescribed.
4. Other drugs . . . .	The standards of identity, purity and strength specified in the latest edition of the British Pharmacopœia or the British Pharmaceutical Codex or any other prescribed pharmacopœia, or adopted by the Permanent Commission on Biological Standardisation of the League of Nations.

THE AGRICULTURAL PRODUCE CESS  
ACT, 1940.

ACT NO. XXVII OF 1940.<sup>1</sup>

[15th April, 1940.]

An Act to make better financial provision  
for the Imperial Council of Agricultural  
Research.

WHEREAS it is expedient to make better financial provision for the carrying out by the Imperial Council of Agricultural Research of the objects for which it is established as set forth in the Memorandum of Association of that body, and for this purpose to impose on certain articles a cess by way of customs duty on export, the proceeds of which shall be paid to the said Council;

It is hereby enacted as follows:—

1. (1) This Act may be called the Agricultural Short title and extent. Produce Cess Act, 1940.

(2) It extends to the whole of British India.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(a) “Collector” means a Customs-collector as defined in clause (c) of section 3 of the Sea Customs Act, 1878, or a Collector of Land Customs as defined in clause (c) of section 2 of the Land Customs Act, 1924, as the case may be, and

(b) “Council” means the Imperial Council of Agricultural Research.

3. (1) A customs duty at the rate of one-half of one per cent. *ad valorem* shall be levied on all articles included in the Schedule which are exported from British India: Imposition of cess.

Provided that the said duty shall not be levied on articles proved to the satisfaction of the Collector not to have been produced in India.

<sup>1</sup>For the Statement of Objects and Reasons, see Gazette of India, 1940, Pt. V, p. 114.

This Act has been applied to British Baluchistan, see Notification No. 168-N., dated 17th October, 1940, Gazette of India, 1940, Pt. I, p. 11.



(2) The Central Government may, by notification in the official Gazette, fix for the purposes of levying the said duty tariff values of any articles included in the Schedule, and may alter any tariff values for the time being in force.

Power to  
exclude  
articles from  
Schedule.

4. The Central Government may, after previous consultation with the Council, by notification in the official Gazette, direct that any article specified in the Schedule shall cease to be subject to the duty imposed by section 3, and thereupon, so long as the notification remains in force, that article shall be deemed not to be included in the Schedule.

Refund of, and  
exemption  
from, cess.

5. The Central Board of Revenue may make rules providing, on such conditions as may be specified in the rules, for—

(a) the refund of duty levied where articles are exported by land and subsequently imported into India, and

(b) the export by land, without payment of the duty of articles, which are subsequently to be imported into India.

Payment of  
cess to  
Council and  
expenditure  
of cess by  
Council.

6. (1) The proceeds of the duty levied under this Act reduced by the cost of collection as determined by the Central Government shall be paid to the Council.

(2) The amount so due shall be paid by the Central Government to the Council at intervals of not more than six months.

(3) The expenditure of the money so paid to the Council shall be subject to such limitations as may be imposed by rules made in this behalf by the Central Government.

Standing  
Finance  
Committee.

7. (1) The Council shall constitute a Standing Finance Committee, of which one member shall be chosen from among the representatives of the Central Legislature on the governing body of the Council, and one member shall be an officer appointed by the Central Government.

(2) Subject to the provisions of sub-section (1), the constitution, functions and procedure of the Standing Finance Committee shall be regulated in such manner as the Council may with the previous approval of the Central Government determine.

8. The Council shall in accordance with the rules made in this behalf by the Central Government create and maintain a reserve fund. Reserve fund.

9. (1) The Central Government may, after consultation with the Council, by notification in the official Gazette, make rules to carry out the purposes of this Act. Power of Central Government to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, the Central Government may make rules regulating the expenditure of the money paid to the Council under section 6 and providing for the creation, maintenance and management of the reserve fund referred to in section 8.

(3) All rules made under this Act shall be laid before both Chambers of the Central Legislature as soon as may be after they are made.

#### THE SCHEDULE.

(See section 3.)

1. BONES.
2. BRISTLES.
3. BUTTER.
4. CEREALS, other than Rice and Wheat
5. DRUGS.
6. FIBRE for brushes.
7. FISH.
8. FRUITS.
9. GHEE.
10. HIDES, raw.
11. MANURES.
12. OILCAKES.
13. PULSES.
14. SEEDS.
15. SKINS, raw.
16. SPICES.
17. TOBACCO, unmanufactured.
18. VEGETABLES.
19. WHEAT.
20. WHEAT FLOUR.
21. WOOL, raw.

# THE WAR DONATIONS AND INVESTMENTS (COMPANIES) ACT, 1940.

ACT NO. XXXVII OF 1940.<sup>1</sup>

[27th November, 1940.]

An Act to enable companies in British India to make donations to public funds formed, and to make investments in Government loans floated, for the purpose of assisting the prosecution of the present war.

**W**HEREAS it is expedient to enable companies in British India to make donations to public funds formed, and to make investments in Government loans floated, for the purpose of assisting the prosecution of the present war;

AND WHEREAS it is also expedient to remove doubts as to the legality of such donations and investments where already made;

It is hereby enacted as follows:—

Short title.

1. This Act may be called the War Donations and Investments (Companies) Act, 1940.

Interpretation.

2. In this Act "Government loan" includes a loan floated by the Government of the United Kingdom.

Power of companies to make donations and investments.

3. Any company formed and registered under the Indian Companies Act, 1913, or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act or Acts repealed thereby may, notwithstanding anything contained in the Indian Companies Act, 1913, and notwithstanding that the memorandum of association or the articles of association of the company do not enable it so to do, by special resolution authorise the making of a donation from the company's assets to a public fund formed, or the making of an investment of the company's assets in a Government loan floated, for the purpose of assisting the prosecution of the present war.

<sup>1</sup> For the Statement of Objects and Reasons, see Gazette of India, 1940, Pt. V, p. 220.

This Act has been applied to:—

British Baluchistan, see Notification No. 243-N., dated 6th January, 1941, Gazette of India, 1941, Pt. I, p. 30; The Darjeeling district and to the partially excluded areas of the Mymensingh district with effect from the 13th February, 1941, subject to certain modifications by Bengal Government Notification No. 383-Com., dated the 6th February, 1941.

*Indian Finance.*

4. Any donation to a public fund formed, and any investment in a Government loan floated, for the purpose of assisting the prosecution of the present war made by any company to which this Act applies between the 3rd day of September, 1939, and the commencement of this Act shall be as valid in all respects as if it had been made in accordance with the provisions of section 3, and after the commencement of this Act.

validation of donations and investments already made.

5. If any question arises whether for the purposes of this Act a loan is a Government loan floated for the purpose of assisting the prosecution of the present war or whether a fund is a public fund formed for the purpose of assisting the prosecution of the present war, the question shall be decided by the Central Government whose decision shall be final.

Decision of doubts.

**THE INDIAN FINANCE (NO. 2) ACT, 1940.<sup>1</sup>**

[29th November, 1940]

An Act to alter the maximum rates of postage under the Indian Post Office Act, 1898, to increase the rates of the taxes on income imposed by the Indian Finance Act, 1940, by a surcharge for the purposes of the Central Government and to increase the rate of super-tax payable by companies.

**W**HEREAS it is expedient to alter the maximum rates of postage under the Indian Post Office

<sup>1</sup> This Act was made by the Governor General under s. 67B of the Government of India Act as set out in the Ninth Schedule to the Government of India Act, 1935. No number was given to this Act.

For the Statement of Objects and Reasons, see Gazette of India, 1940, Pt. V, p. 232.

This Act has been applied to :—

British Baluchistan, see Notification No. 223-N., dated 18th December, 1940, Gazette of India, 1940, Pt. I, p. 1748 ; all partially excluded areas of the province of Orissa, by Orissa Government Notification No. 341-F., dated 28th January, 1941 ;

partially excluded areas of the province of Madras, by Madras Government Notification No. 16, dated 24th January, 1941 ;

the Chittagong hill tracts with effect from the 29th November, 1940, subject to certain exceptions by Bengal Government Notification No. 348, dated the 24th December, 1940 ;

the partially excluded areas of the Mymensingh district and the Darjeeling district with effect from the 29th November, 1940, by Bengal Government Notification No. 950-F.B., dated the 10th February, 1941.

Act, 1898, to increase the rates of the taxes on in- **VI of 1898**  
come imposed by the Indian Finance Act, 1940, by a **XVI of 1940**,  
surcharge for the purposes of the Central Govern-  
ment, and to increase the rate of super-tax payable  
by companies;

Short title and  
extent.

It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Finance  
(No. 2) Act, 1940.

Inland postage  
rates.

(2) It extends to the whole of British India.

2. In the First Schedule to the Indian Post Office  
Act, 1898, as inserted in that Act by section 6 of the **VI of 1898**,  
Indian Finance Act, 1940,— **XVI of 1940**,

(a) in the first entry under the heading  
“*Letters*”, for the words “One anna the  
words “One and a quarter anna” shall be  
substituted;

(b) for the first entry under the heading “*Book,  
Pattern and Sample Packets*” the following  
entry shall be substituted, namely:—

“For the first five tolas or

fraction thereof.....Nine pies”;

(c) in the second entry under the heading “*Book,  
Pattern and Sample Packets*”, for the words  
“in excess of two and a half tolas” the words  
“in excess of five tolas” shall be substitut-  
ed.

Income-tax  
and super-tax.

3. (1) Subject to the provisions of this section,  
the rates of income-tax and the rates of super-tax  
other than super-tax payable by a company, imposed  
by sub-section (1) of section 7 of the Indian Finance  
Act, 1940, shall in respect of the year beginning on **XVI of 1940**  
the 1st day of April, 1940, be increased by a sur-  
charge for the purposes of the Central Government  
amounting to one-twelfth of each such rate, and the  
rate of super-tax payable by a company imposed by  
the said sub-section shall in respect of the same year  
be increased by one-twelfth.

(2) In making any assessment for the year ending  
on the 31st day of March, 1941,—

(a) where the total income of an assessee, not  
being a company, includes any income  
chargeable under the head “Salaries” or  
under the head “Interest on Securities”, or

XI of 1922.

any income from dividends in respect of which he is deemed under section 49B of the Indian Income-tax Act, 1922, to have paid income-tax imposed in British India, the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates in force before the commencement of this Act on his total income the same proportion as the amount of such inclusions bears to his total income :

XI of 1922.

(b) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" on which super-tax has been or might have been deducted under the provisions of sub-section (2) of section 18 of the Indian Income-tax Act, 1922, the super-tax payable by the assessee on that portion of his total income which consists of such inclusions shall be an amount bearing to the total amount of super-tax payable according to the rates in force before the commencement of this Act on his total income the same proportion as the amount of such inclusions bears to his total income.

XI of 1922.

(3) For the purposes of the proviso to sub-section (2) of section 18 of the Indian Income-tax Act, 1922, the amount by which any deduction made under that sub-section by a person responsible for paying any income chargeable under the head "Salaries" falls short of the deduction which could have been made had the rates imposed by this Act then been in force shall be deemed to be a deficiency arising out of a previous deduction or failure to deduct.

XI of 1922.

(4) Notwithstanding that the Income-tax Officer has assessed the total income of an assessee and has determined the sum payable thereon under section 23 of the Indian Income-tax Act, 1922, he may proceed to determine the further sum payable by such assessee by virtue of sub-section (1) of this section and such further sum shall for the purposes of the Indian Income-tax Act, 1922, be deemed to be a sum determined under section 23 of that Act.

XI of 1922.



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